



**(1) MINISTRY OF INFRASTRUCTURE AND ENERGY**

**As the Contracting Authority**

**And**

**(2)**

\_\_\_\_\_

**As the Concessionaire**

**And**

**(3)**

\_\_\_\_\_

**As the Concessionaire Company**

**CONCESSION CONTRACT**

**For**

**The Design, Construction, Operation, Maintenance, Rehabilitation and Transfer of Road Axis**

**“MILOT - BALLDRE”**

This draft contract shall be changed for the purpose of matching it with the winning bid and can be further amended upon the negotiations between the Contracting Authority and the Bidder that has been selected as the most successful, and/or as per the opinions of the institutions to which it is sent for an opinion.

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**CONTRACT FOR THE CONCESSION OF DESIGN, CONSTRUCTION, OPERATION, MAINTENANCE, REHABILITATION AND TRANSFER OF ROAD AXIS MILOT - BALLDRE**

**PARTIES:**

1- The Ministry of Infrastructure and Energy as the ministry responsible for infrastructure (hereinafter "Contracting Authority"), represented by \_\_\_\_\_;

2- \_\_\_\_\_ (hereinafter "Concessionaire"), a company established under the Law, with headquarters in: \_\_\_\_\_, and main address at: \_\_\_\_\_, with NUIS \_\_\_\_\_ represented by \_\_\_\_\_, holder of ID card no. \_\_\_\_\_, major and with full judicial capacity to act; and

3- \_\_\_\_\_, a company established under the Law for the implementation of the \_\_\_\_\_ Project, registered at the National Business Center with NUIS \_\_\_\_\_, address at: \_\_\_\_\_, represented by \_\_\_\_\_, holder of ID card no. \_\_\_\_\_, major and with full judicial capacity to act.

(hereinafter "Concessionaire Company"),

The Contracting Authority, the Concessionaire and the Concessionaire Company shall each be referred in this Contract as the "Party" and collectively the "Parties", in their singular or plural linguistic versions, as may be required from time to time by the context of this Contract.

**RECITALS**

WHEREAS, based on Law No. 125/2013 "On the Concession and Public Private Partnership", as amended and the Decision of the Council of Ministers Nr.575, dated 10.07.2013 "On the adoption of rules for the concession/public private partnership evaluation and award", as amended and tender documentation, date \_\_\_\_\_, the Contracting Authority invited bidders to submit their bids for the Design, Construction, Operation, Maintenance, Rehabilitation and Transfer of Road Axis Milot – Balldre;

WHEREAS, as a result of the evaluations of the Contracting Authority, the latter decided that the Concessionaire is the best bidder to carry out the Project according to the conditions agreed between the Parties;

THEEFORE, the Parties agree that this Contract reflects the mutual rights and obligations related to the concession of the Object (as defined below).



## CHAPTER 1 GENERAL PROVISIONS

### Article 1. Definition of terms

"**Deadline for Submission of Annual Statements of Payments**" has the meaning given to it in Article 107 (*Annual Statements of Payments*) of this Contract.

"**SCA**" is currently the State Cadaster Agency as a public institution that is organized and operates in accordance with the provisions of law no. 111/2018 "On *the Cadaster*", as amended, or any institution that replaces it in the future.

"**Contracting Authority**" is the Ministry of Infrastructure and Energy or in case of reorganization, the ministry responsible for infrastructure.

"**Relevant Authority**" are entities, agencies, authorities, bodies or state, municipal, national, regional, regional or local persons that exercise activity in the Republic of Albania and/or have jurisdiction and competence to exercise official powers in the territory of the Republic of Albania.

"**Bank**" means a second level bank in the Republic of Albania, selected by the parties of the Mutual Monitoring and Coordination Agreement (MMCA) referring to the Operating service, in compliance with the provisions of the Agreement.

"**Unsecured Debt**" means the credit or loan, that is not covered by the collateral, granted to the Concessionaire Company by the Lenders.

"**Abandonment**" means (i) the interruption of the Works foreseen under the Contract, for a period of 3 (three) consecutive days, (ii) non-commencement of Works within 3 (three) months after the completion of a Force Majeure Event, as long as the Contract has not been terminated in accordance with the provisions of Article 99 (*Contract Termination Due to Force Majeure Event*). The Date of Abandonment shall be considered the date on which the notice was received by the Concessionaire Company as per the above-mentioned cases. If the Concessionaire Company fails to give notice to the Contracting Authority as per the above mentioned cases, date of abandonment shall be considered that the Contracting Authority notices the interruption or non-commencement of these Works. Failure to perform the Works or a part of the Works within the time limits specified in the Contract, due to the actions or omissions of the Contracting Authority or during a Force Majeure Event, shall not be considered as Abandonment.

"**Certificates of Utilization**" are official documents issued by the responsible authority that approves the request from the Concessionaire or the Concessionaire Company, which certifies that the construction of the Work or a part of it is in accordance with the conditions of the construction permit and that the works performed and the construction are suitable for use.

"**Certificate of Completion**" are official documents (including preliminary certificates or attestations), certifying the possibility for the vehicles to use the Work or any Segment of it, issued in accordance with the provisions of Article 45 (*Obtaining the Certificate of Completion*) of this Contract.

"**Operating Commencement Date of the Concessionaire Company**" has the meaning given in Article 52 (*Operating Commencement Date of the Concessionaire Company*) of this Contract.

"**Works Commencement Date**" is the date when the Concessionaire Company notifies the Contracting Authority about the starting of the Works under this Contract.

"**Effective Date**" has the meaning given in Article 6 (*Preliminary Conditions*).

"**Signing Date**" shall be the date of signing this Contract.

"**Contract Closure Date**" is the date on which the first of one of the following events occurs:

- a. Last date of expiry of the Concession Period; or
- b. Contract Termination Date of this Contract determined in accordance with the provisions made in CHAPTER 15 (*Early Termination of the Contract*) of this Contract.

"**Works Completion Date**" is the date on which the Completion Certificate for the construction of Works shall be issued.

"**Defect**" means a Road defect that results from non-fulfillment with fault of the obligations of the Concessionaire Company regarding the Standards.

"**Damage**" means Direct Loss and Lost Profit.

"**Business Day**" is every weekday without including Saturday, Sunday and official holidays in the Republic of Albania.

"**Day**" means every calendar day.

"**Bid Documentation**" is the documentation that the Concessionaire has submitted as part of the bid during the competitive procedure of the Contracting Authority dated \_\_\_\_\_ regarding the design, construction, operation, maintenance and rehabilitation of the Road "Milot – Balldre".

"**Project Documentation**" has the meaning given in Article 34 (*Project Documentation*) of this Contract.

"**Tender Documentation**" are the competitive procedure documents drafted by the Contracting Authority regarding the design, construction, operation, maintenance and rehabilitation of the Road "Milot – Balldre", published on the website of the Public Procurement Agency.

"**Project Territory Delivery**" means the delivery of the Project Territory by the Contracting Authority to the Concessionaire Company, in any case released by (i) any of the obstacles to perform the Works, including the expropriations and Demolition of the Objects and the removal of the persons from these objects and from the Project Territory or (ii) by any claim of Third Parties.

"**EKORR**" is the National Road Operating Entity, a joint stock company with 100 (one hundred) % state capital, organized and functioning in compliance with the provisions of the DCM No. 684, date 6.11.2024 "On the establishment of the joint stock company "National Road Operating

Entity”sha”.

"**Euro**" is the legal currency of the European Economic and Monetary Union, or any other currency with which the European Economic and Monetary Union may replace it.

"**Tariff Evasion**" is the passing of the User through the Tariff Area and not paying the relevant Tariff with any acceptable means of payment.

"**Contract Guarantee**" has the meaning given to it in Article 14 (*Contract Guarantee*) of this Contract.

"**Quiet Enjoyment**" means the exclusive right to exploit and enjoy the Site and/or the Work (including existing objects) and the right to pass over and under the Site, and in any part thereof, as well as to enter and exit it, for the purpose of implementing this Contract, within the time limit, without unjustified intervention by the Contracting Authority or any Relevant Authority.

"**Schedule of Works**" is the detailed calendar of Works to be performed by the Concessionaire Company, which is attached to this Contract as Appendix 10 (*Project-Idea, sketches, layouts and Works Schedule*), and approved changes to the Construction Permit, if any.

"**Lender**" are credit or financial institutions or other similar financial bodies professionally engaged in lending money, which may be parties to Financing Agreements, or may have rights under Financing Agreements, and/or grant to the Concessionaire Company financing in the form of bond financing lines, priority debt or debt with the right of repayment in equity or similar (and "hedging" agreements) in accordance with such Financing Agreements and will include insurers issuing guarantees or similar securities for these financing lines or Third Persons agreeing to perform free Works, provided that the unpaid amount is returned to them in debt or Persons purchasing and owning bonds to finance the Project.

"**Direct Loss**" means:

a) For the Concessionaire Company:

any loss of income, or other effective damage that comes as a result of the breach or non-compliance of the obligations related to this Contract by the Contracting Authority or by a State Action Essentially Contrary to the Contract, and/or any additional cost caused as the result of the breach or non-compliance of the obligations related to this Contract by the Contracting Authority or by a State Action Essentially Contrary to the Contract; and any loss or damage resulted by the Concessionaire Company as a result of property damages or personal damage; and

b) For the Contracting Authority any loss or damage suffered as a result of damage to property or personal damages as well as any additional costs incurred as a result of breach or non-fulfillment of the obligations of this Contract by the Concessionaire Company.

"**Identification of Objects for Expropriation**" means the compilation and delivery at the Relevant Expropriation Authority (ASHSH) by the Concessionaire Company: (i) of a list of properties and their owners within the Project Territory, which on the Signing Date are registered

with the SCA and must be Expropriated by the Relevant Expropriation Authority, (ii) of a list of objects that are not registered in the SCA and that should be demolished by the Relevant Authority as part of the Project Territory Deliver, as well as (iii) the request for Expropriation, which should be accompanied with the relevant documentation according to the provisions of the Law No. 8561, date 22.12.1999 “*On expropriation and temporary use of the private property for a public interest*”, as amended.

**"Operating Infrastructure"** has the meaning given to it in Article 51 (*Operating Service*) of this Contract.

**"Unforeseen Public Infrastructure"** has the meaning given to it in Article 38 (*Public Infrastructure Networks*) of this Contract.

**"Independent Engineer"** is the Independent experienced Person or Persons, foreign and/or Albanian, who are contracted by the Contracting Authority, in accordance with this Contract, to supervise the construction, operation, maintenance and rehabilitation of the Work, road axis Milot-Balldre in accordance with the provisions of this Contract and the Contract with the Independent Engineer, and who perform the duties of Independent Engineer in relation to the technical, legal, economic-financial aspect, in compliance with the provisions of this Contract and the Contract with the Independent Engineer. The main duties of the Independent Engineer are listed in Appendix 5 (*Main Duties of the Independent Engineer*) of the Contract.

**"Price index in Euro"** is the harmonized index of consumer prices of the Eurozone (with variable composition), published by Eurostat or if this index is no longer published, any other harmonized Eurozone consumer price index replacing this index.

**"Consumer price index in ALL"** is the consumer price index for Albania, published by the Institute of Statistics of Albania.

**"Production price index in EU"** is the industrial production price index published by Eurostat or, if this index is no longer published, any other index that replaces this index of industrial production cost in EU.

**"Invested Capital"** are the amounts that the Shareholders of the Concessionaire or the Concessionaire Company invest in function of fulfilling this Contract as Net Capital.

**"Net Capital"** is the capital of the Concessionaire Company, including all monetary values/payable as a result of the subscription/payment of quotas/shares, from contributions granted by its Shareholders, Related Companies or controlling of the Concessionaire Company (directly or indirectly), which do not result in paid debt, as well as all assets of the Concessionaire Company.

**"Request for Payment"** has the meaning given in the Article 109 (*Request for Payment of Compensation for Contract Termination*) of this Contract.

**"Duration of the Contract"** is the period of time that begins with the Effective Date of the Contract and ends with the Contract Closure Date of the Contract.

**"Compensation for the Tariff Evasion"** is the amount equal to the amount that the User who has committed a Tariff Evasion would have to pay in accordance with the Tariff Rates applicable at the time of the Tariff Evasion.

"**Compensation for Contract Termination**" means, as the case may be, separately or together, Compensation for the Contract Termination due to Non-fulfillment by the Contracting Authority, Compensation for the Contract Termination due to Non-fulfillment by the Concessionaire Company and/or Compensation for the Contract Termination due to the Force Majeure Event.

"**Compensation for Contract Termination Due to Non-Fulfillment by the Contracting Authority**" has the meaning given in Article 104.1(*Compensation for Contract Termination Due to Non-Fulfillment by the Contracting Authority*) of this Contract.

"**Compensation for Contract Termination Due to Non-Fulfillment by the Concessionaire Company**" has the meaning given in Article 103(*Compensation for Contract Termination Due to Non-Fulfillment by the Concessionaire Company*) of this Contract.

"**Compensation for Contract Termination due to the Force Majeure Event**" has the meaning given in Article 105 (*Compensation for Contract Termination Due to due to the Force Majeure Event*) of this Contract.

"**Concessionaire**" has the meaning given in the introduction to this Contract.

"**Contract of the Independent Engineer**" is the contract concluded between the Contracting Authority and the Independent Engineer, in relation to the performance of the duties of the Independent Engineer for the supervision and control of the Works for the construction and maintenance of the Road in accordance with this Contract.

"**Contract**" is this concession contract and its Appendices.

"**Control**" of a Person by another Person is when that latter Person (alone or with others and directly or indirectly) has a majority of the First Person's capital either through the holding of equity shares/quotas or has the majority of votes or has the right to determine the decision-making of the first Person, or any other right that has or may have or brings the same consequence as in any of the above cases.

"**Corridor**" means the road segments planned to be built in the territory of the Republic of Albania on the basis of the concession contracts between the Contracting Authority and the companies declared winners in the competitive procedures organized for this purpose, which are coordinated and monitored referring to the Operating Service by the National Road Operation Entity.

"**Albanian Lek**" – ALL is the official currency of the Republic of Albania, as it may change according to the Law.

"**Construction Permit**" is the act of approval of the construction permit and authorization to perform the relevant works by the Relevant Authority in accordance with Law no. 107/2014" *On territorial planning and development*" as amended, for the development and construction of the entire Project as a whole and in each of its phases, as defined in the Design Project.

"**Law**" is any applicable act regardless of the body that approves it, national or local, law, agreement, convention, ordinance, decree or other act, regulation, sub-legal act or any rule, code or instruction or license, approval, permit, authorization or other approval of the Republic of Albania or of any entity or subdivision thereof, or of a Person established by Law (independent

or not), having the appropriate jurisdiction, to the extent that such an act has been published and is publicly available, and which is subject to the execution of decisions of different courts and similar judicial bodies of the Republic of Albania, orders, instructions or decisions of ministers, instructions or circulars of various departments of the Relevant Authorities, as well as interpretations of official bodies of the Republic of Albania, having jurisdiction over the matter in question, as may be amended from time to time during the term of the Contract.

**"List of Excluded Users"** means the attached list as Appendix 3 (*List of Excluded Users*) of this Contract.

**"Escrow Account"** means the escrow account managed by the Bank, in which the parties to the Mutual Monitoring and Coordination Agreement, referred to the Operating Service, shall deposit the Revenues collected from the Tariff.

**"Maintenance Manuals"** means the Road maintenance manual detailed in Appendix 8 (*Bid Documentation*).

**"Direct Agreement"** is the agreement entered between the Contracting Authority, the Concessionaire, the Concessionaire Company and the Lenders.

**"Mutual Monitoring and Coordination Agreement, referred to the Operating Service"** has the meaning given in Article 54 (*Monitoring, Coordination of Operating Service by the National Road Operating Entity*) of this Contract.

**"Financing Agreements"** are any loan agreement, promissory note, bond, insurance or securities agreement, mortgages, trusts, credit agreements, notes or bond purchase agreements, participation agreements, Direct Agreement, and any other documents related to financing the design, construction, operation, maintenance and rehabilitation of the Road Project, for the exercise of the concession rights, including any modification, addition, extension and substitution for such financing, and any hedging agreement for the interest, in compliance with the Financial Model as the case may be.

**"Hazardous Materials"** has the meaning given in Article 37 (*Hazardous Materials*) of this Contract.

**"Financial Closure"** is the date when the Concessionaire Company confirms in writing to the Contracting Authority that has provided financial support from the Lenders, or Financing Parties, or that it has the necessary funds to implement the Project.

**"Necessary Approval"** is any Certificate of Utilization, consent, license, approval, permit or authorization, temporary or final, that is required in connection with the Project and that must be issued by the Relevant Authority, excluding the Necessary Approval from the Contracting Authority.

**"Necessary Approval of the Contracting Authority"** is any Certificate of Completion, consent, license, approval, permit or authorization, temporary or final, that is required in connection with the Project and that must be issued by the Contracting Authority, excluding the Necessary Approval.

**"Winter Maintenance"** are Maintenance Works related to the prevention of ice formation and the removal of snow and ice, according to the specifications detailed in Appendix 8 (*Bid Documentation*).

**"Routine Maintenance"** are maintenance Works during the Operating Period, the value of which shall be indexed each year as per the formula in the article 72.2 of this Contract. The routine maintenance Works are of short-term or cyclical nature and are necessary to keep the Road in functional, good and harmless working condition, which includes minor repairs of the all elements of the Road, cleaning, maintenance of the surrounding area and inspections and winter maintenance carried out together with the observations accompanying each work as above according to the specifications detailed in Appendix 6 (*Overview of Maintenance Services Activities*).

**"Financial Model"** is at the Signing Date, the financial model presented in the Concessionaire Bid Documentation and after the Signing Date, the updated financial model in compliance with this contract.

**"Non-Fulfillment by the Contracting Authority"** has the meaning given in Article 98.1 (*Contract Termination Due to Non-Fulfillment by the Contracting Authority*) of this Contract.

**"Non-fulfillment by the Concessionaire Company"** has the meaning given in Article 97.1 (*Contract Termination Due to Non-Fulfillment by the Concessionaire Company*) of this Contract.

**"Month"** is a calendar month during the Concession Period. A "Month" refers to a period beginning on a day in a calendar month and ending on a day corresponding numerically to the following calendar month (excluding that day), unless there is no corresponding day numerically in the Month in which that period ends, that period will end on the last day of that calendar Month.

**"Urgent Intervention/s"** have the meaning given in Article 66 (*Urgent Interventions of the Concessionaire Company*) of this Contract.

**"Qualifying Law Amendment"** has the meaning given in Article 82.2 (*Types of Amendments to the Law*) of this Contract.

**"Discriminatory Law Amendment"** has the meaning given in Article 82.3 (*Types of Amendments to the Law*) of this Contract.

**"Amendment to the Law"** is the amendment of the Law that occurs after the date of signing of this Contract.

**"Change Required by the Contracting Authority"** is the change requested by the Contracting Authority based on the provisions made in Article 49.1 (*Changes Requested by the Contracting Authority*) of this Contract.

**"Specific Law Amendment"** has the meaning given in Article 82.4 (*Types of Amendments to the Law*) of this Contract.

**"Subcontractor"** means the Maintenance Subcontractor, the Construction Subcontractor and

any other subcontractor with whom a subcontract is related for the execution of the Project.

**“Maintenance Subcontractor”** is a subject registered according to the Law, with headquarters at the address stated in the NBC and represented by the administrator or his legal representative, as a designated and regularly authorized representative on the basis of a Maintenance Subcontract.

**“Construction Subcontractor”** is a subject registered according to the Law, with headquarters at the address stated in the NBC and represented by the administrator or his legal representative, as a designated and regularly authorized representative on the basis of a Construction Subcontract.

**“Subcontracts”** are Construction Subcontracts and Maintenance Subcontracts.

**“Maintenance Subcontract”** is any subcontract entered into for the performance of the Maintenance Works or a part thereof, with the relevant changes and substitutions made from time to time in accordance with this Contract.

**“Construction Subcontract”** is any subcontract entered between the Concessionaire Company and a Construction Subcontractor for the performance of the Works or a part thereof, with the relevant changes and substitutions made from time to time in accordance with this Contract.

**“Project Implementation Unit”** or **“PIU”** means the unit established by the Contracting Authority to monitor the implementation of this Contract.

**“Internal Rate of Return on Capital”** is the internal rate of return on Investment Capital of the Concessionaire, as calculated in the Financial Model, including any changes it may have under the provisions of this Contract.

**“Force Majeure Event”** has the meaning given in Article 79 (*Force Majeure*) of this Contract.

**“Notice of Correction”** has the meaning given in Article 97.3 (*Termination due to Non-fulfillment by the Concessionaire Company*) of this Contract and/or Article 98.3 (*Contract Termination Due to Non-fulfillment by the Contracting Authority*), as the case may be.

**“Notice of Non-fulfillment by the Contracting Authority”** has the meaning given in Article 98.2 (*Contract Termination Due to Non-fulfillment of Obligations by the Contracting Authority*) of this Contract.

**“Notice of Non-fulfillment of Obligations by the Concessionaire Company”** has the meaning given to Article 98.2 (*Contract Termination Due to Non-fulfillment of Obligations by the Concessionaire Company*) of this Contract.

**“Notice of Change by the Contracting Authority”** has the meaning given in Article 49 (*Changes Requested by the Contracting Authority*) of this Contract.

**“Notice of Change by the Concessionaire”** has the meaning given in Article 50 (*Changes Requested by the Concessionaire Company*) of this Contract.

**“Archaeological Objects”** has the meaning given in the definition “archaeological asset” of the Law no. 27/2018 “*On Cultural Heritage and Museums*”.

**“Temporary facilities”** are all temporary structures and installations needed for the construction



of the Road.

"**Cultural Heritage Objects**" has the meaning given in the definition of "tangible cultural asset" of the Law no. 27/2018 "On Cultural Heritage and Museums".

"**Object**" has the meaning given in Article 3 (*Object of the Contract*) of this Contract.

"**Shareholder**" has the meaning given by the provisions of Law no. 9901, dated 14.04.2008 "On entrepreneurs and commercial companies", as amended or according to the provisions of the applicable Law of the country where the company is registered.

"**Payment by the Contracting Authority**" is any payment that the Contracting Authority or any Party of the Contracting Authority owes to the Concessionaire Company or to the Concessionaire under the provisions of this Contract or the Mutual Monitoring and Coordination Agreement referring to the Operating Service.

"**Debt Service Payments**" means those payments as required by the Concessionaire or Concessionaire Company to its financiers under the Financing Agreements in each Contract Year. For the avoidance of doubt, this term shall comprehend payments of principal, interest and other expenses, foreseen under the Financing Agreement.

"**Revenue Surplus Reconciliation Payment**" is the payment that the Concessionaire Company may make to the Contracting Authority each year during the Operating Period, if are surpassed the Basic Revenue, and equal to the value resulting from the application of the formula as follows: the difference arising from the Tariffs Revenue collected for that Year minus Basic Revenue foreseen for the same Year multiplied by .....(.....%). To avoid any misunderstanding, the Tariff Revenue is equivalent to the Basic Revenue, or if the difference resulting from the Tariff Revenue minus the Basic Income is a negative number, the Concessionaire Company shall not make any Surplus Revenue Payment. Regarding the calculation of the Revenue Surplus Reconciliation Payment, the Revenues from the Tariffs collected in ALL shall be converted in Euro with the annual average exchange rate Euro/ALL published by the Bank of Albania for that year that is done the reconciliation.

"**Revenue Reconciliation Payment**" is the Revenue Deficit Reconciliation Payment or Revenue Surplus Reconciliation Payment, as the case may be.

"**Revenue Deficit Reconciliation Payment**" is the payment that the Contracting Authority may make to the Concessionaire Company for each Year of the Contract throughout the Warranty Period, if applicable. This payment will be equal to the value resulting from the calculation of the difference between the Basic Revenue projected for that Year minus the Tariffs Revenue collected for that Year, always limited to the Ceiling Payment for the respective Year. To avoid any misunderstanding, if the difference above turns out to be a negative number (i.e. Tariffs Revenue are higher than Basic Revenue), the Contracting Authority shall not make any Revenue Deficit Reconciliation Payments.

"**Ceiling Payment**" is the maximum payment that the Contracting Authority can do for One year of the Contract during the Guarantee Period, as per the Appendix 4 (Payment of the Contracting Authority during the Guarantee Period).

"**Contracting Authority Party**" is separately the Contracting Authority and its officials, employees and agents and any Subcontractor or Person employed or engaged by each of them (including the Representative of the Contracting Authority but not including the Concessionaire Parties) as well as other Relevant Authorities that as the case may be, assist the Contracting Authority in the implementation of the Contract, including, but not limited to the National Road Operating Entity.

"**Injured Party**" is the party that has suffered damage or that claims to have been harmed by a Force Majeure Event or other causes during the performance of this Contract.

"**Concessionaire Party**" is separately the Concessionaire, the Concessionaire Company, the Subcontractor, the Representative of the Concessionaire Company, and the persons employed or engaged by each of them, in relation to the realization of the Object of this Contract.

"**Party**" has the meaning given in the introduction to the Contract.

"**Third Party**" has the meaning of any individual, physical person, juridical person, trade company, partnership or organization of any form of functioning as provided by the Law or the law of another country, public or private, excluding the Contracting Authority and the Concessionaire Company.

"**Annual Statement of Payments**" has the meaning given in Article 107.1 (*Annual Statements of Payments*) of this Contract.

"**Warranty Period**" is the **period of \_\_\_\_\_ years** starting on January 1 of the Year after the Operating Commencement Date, unless the Operating Commencement Date is January 1, in which case it begins on that date and not in the next Year.

"**Concession Period**" has the meaning given in Article 5 (*Concession Period*) of this Contract.

"**Period of Mutual Monitoring, Coordination referring to the Operating Service**" has the meaning given in Article 54 (*Monitoring, Coordination of Operating Service by the National Road Operating Entity*) of this Contract.

"**Period of Operating of the Concessionaire Company**" has the meaning given in article 52.2 (*Date of Operating Commencement of the Concessionaire Company*) of this contract.

"**Defect Liability Period**" in relation to a Segment of the Road means the period of 12 (twelve) Months from the date of receipt of the Certificate of Completion for that Segment.

"**Construction Period**" **is the period of 30 months** starting from the date of Commencement of Working Date, during which the construction Works of the construction phase and the completion of the Work, the road segment Millot – Balldre are realized according to the Bid Documentation and Implementation Project.

"**Person**" shall mean any individual, natural, legal person, company, partnership or organization of any kind of organization provided by Law or the law of another country, including the Contracting Authority and the Relevant Authorities.

"**Person Responsible for the Operating Service**" is the Concessionaire Company, which in

continuity should cooperate and coordinate with the National Road Operating Entity for the operating service of the road Milot - Balldre.

"Users" are Road users.

"**Representative of the Contracting Authority**" is the Person authorized to act as a representative of the Contracting Authority under the Contract.

"**Representative of the Concessionaire Company**" is the Concessionaire himself or a Person authorized in writing to represent him.

"**Environmental Management Plan**" means the environmental management plan as part of the Bid Documentation, as may be amended from time to time with the approval of the Parties.

"**Road Maintenance Plan**" is the plan made available in accordance with Appendix 6 (*Overview of the Maintenance Service Activities*).

"**Road Operating Plan**" is the plan made available in accordance with Article 57 (*Road Operating Plan*) of this Contract.

"**Good Industry Practice**" is the exercise of the degree of competence, correctness, prudence and foresight that would be reasonably and commonly expected by a competent and experienced contracting party in the road construction sector in Albania and which seeks to fulfill in good faith its contractual obligations, in compliance with all Laws, engaged in the same type of enterprise and working in the same or similar circumstances and conditions.

"**Carried Problem**" is any pretense, claim, or liability provided by Law that has arisen from an act or omission in respect of parts of the Site prior to the Effective Date of the Contract.

"**Operating Coordination Procedures**" has the meaning given in Article 56 (*Operating Coordination Procedures*) of this Contract.

"**Capital Repair Program**" is the final version of the program for the capital repair, approved or designated, respectively, in accordance with the Contract and the Project.

"**Project Idea**" has the meaning given in Article 34 (*Project Documentation*) of this Contract.

"**Project Implementation**" has the meaning given in Article 34 (*Project Documentation*) of this Contract.

"**Project**" is the entirety of the activities defined in the Object of this Contract according to the Implementation Project and the performance of each part of the Works and Services in the Site and/or the Work during the Duration of the Contract as well as the financing according to the Bid Documentation submitted by the Concessionaire Company.

"**Proposal**" has the meaning given in Article 54 (*Monitoring, Coordination of Operating Service by the Operating Entity*) of this Contract.

"**Works**" are construction works, geotechnical works and any other work that may be needed in connection with the design, construction, rehabilitation and maintenance of the road axis Millot-Badre and of the Temporary Facilities by the Concessionaire Company according to the Project

Implementation.

"**Capital works**" are construction works, which are necessary in relation to the Work such as (i) Initial geotechnical Works; (ii) Rehabilitation Works and (iii) Works at overpasses and deviations/junctions.

"**Maintenance Center**" means the building/buildings where the personnel responsible for supervising and coordinating the implementation of the Maintenance Service are located, according to this Contract.

"**Operating Center**" means the building/buildings where the personnel responsible for supervising and coordinating the implementation of the Operating Service are located, including traffic management and Tariff collection.

"**NBC**" actually is National Business Center, a government institution organized and functioning as per the provisions of the Law No. 131/2015 "On the National Business Center".

"**Final Report**" is the report on the completion of Works which is drafted by the Concessionaire Company and submitted to the Authority at the end of the Works of the object of the Contract.

"**Capital Repair**" is the maintenance service of the Road, (which is not a Routine Maintenance or Winter Maintenance) performed by the Concessionaire Company any 10 (ten) years starting from the Works Closing Date , in compliance with the technical rules of road design and Bid Documentation. The Capital Repair Amount that shall be invested by the Concessionaire Company any 10 (ten) years shall be not less than the amount \_\_\_\_\_Euro, indexed yearly referring to point 72.2 of this Contract.

"**Unsecured Risk**" means an event or situation, which is not covered or is excluded in the general terms of insurance policy contracts offered in the Albanian insurance market by insurance companies licensed by the Relevant Authority.

"**Road**" has the meaning of the road "Milot – Balldre" (Category A), according to the meaning given to the highway in Article 2 of the Road Code of the Republic of Albania.

"**Segments**" are geographical positions within the trace of the Project Territory or Road, schematically separated, on which the Works or Services shall be performed.

"**Insurance**" has the meaning given in Article 87.1 (*Insurance*) of this Contract.

"**Third Party Liability Insurance**" is third party liability insurance, which is part of the Insurance to be purchased and held on the basis of the provisions made in Article 87 (*Insurance*) of this Contract.

"**Quality Systems**" are the quality management systems made available in accordance with Appendix 6 (*Overview of the Maintenance Services Activities*).

"**Situation**" includes all factual evidences approved by the Independent Engineer of Works, which reflect the locations, sizes, construction materials and other details of the realized Works, accompanied by all the sketches, calculations, reports, specifications, etc.

"**Geotechnical Emergency Situation**" is an event of an unforeseen geotechnical phenomenon (such as landslides that partially or completely block the carriageway), which may adversely affect Works and Services.

"**Construction Sketches**" are sketches that are realized by the calculations drafted in accordance with the requests of the Contracting Authority and the Law, in which are presented all the dimensions, calculations and details necessary to enable the Concessionaire Company to carry out the Works.

"**Standards**" are the standards identified in the Project Implementation in relation to Works and Services to the Road, in accordance with the Law.

"**Demolition of Objects**" means the demolition by the Relevant Authorities of expropriated objects or unlicensed objects located in the Project Territory including the costs of transport and disposal of waste after demolition, which in any case are covered by the Contracting Authority.

"**Tariff Area**" is the designated area of the Road, specially designed and built to house the Tariff collection facilities and related operations.

"**Site**" means the land (regardless of its status) on which the Works will be carried out, that may be part of the Project Territory and /or Extra Land.

"**Services**" are the Maintenance Services and Road Operating Services provided in Appendix 8 (*Bid Documentation*).

"**Maintenance Services**" are Winter Maintenance services and Routine Maintenance services of the Road according to the provisions of this Contract.

"**Operating Service**" has the meaning given in Article 51 (*Operating Service*) of this Contract.

"**Cause of Relief**" has the meaning given in Article 80.1 (Causes of Relief) of this Contract.

"**Tariff Rates**" are the actual rates of Tariff implemented by the Concessionaire Company, as per the provisions of this contract, in relation to the type of motor vehicle that uses the Road.

"**Related Company**" means any company that holds Control of that company, any company that is under the Control of that company, or any subsidiary that has Control over that company.

"**Concessionaire Company**" has the meaning given in the entrance of his Contract.

"**Other Concessionaire Company**" has the meaning of each concessionaire company that have constructed or shall construct other segments of the Corridor.

"**Capital Expenditures**" means expenditures that are classified by Law or generally accepted accounting principles as capital investments or capital expenditures.

"**Expropriation**" in the context of this Contract shall mean the expropriation procedure, or any measure or action which, taken separately or together, has an effect equivalent to the expropriation, with the funds and expenses of the Contracting Authority, or any Authority other Relevant in accordance with the relevant law, for all legal owners and third parties who enjoy

rights over the areas to be used for the fulfillment of the Object of the Contract.

"**Appendix**" is any appendix, statement, certification, authorization, decision, order or other document signed by the parties to this Contract, as an integral and integral part thereof, now or in the future.

"**Tariff**" is the toll paid by Road Users.

"**Duty**" or "**Tax**" has the respective meaning as defined in the tax and customs applicable legislation.

"**Project Territory**" has the meaning given in Article 23 (*Project Territory*) of this Contract.

"**Basic Revenue**" means, for each Year of the Contract, the amounts specified in the column "Basic Revenue" in Appendix 4 (*Surplus Payments of the Revenue from the Concessionaire Company*).

"**Tariff Revenue**" are the tariffs collected by the Users on behalf of the Concessionaire Company.

"**Additional Revenue**" means any additional revenue related to the use of the Road, other than Tariff Revenue and Revenue from Service Locations.

"**Rights of the Contracting Authority**" are all the rights granted to the Contracting Authority as per this Contract and as provided in the applicable legislation.

"**Rights of the Concessionaire Company**" are all rights granted to the Concessionaire Company under the Object of the Contract, including the right to design, build, operate, rehabilitate, maintain and finance these Road activities in accordance with the Law and this Contract; the right to any payment, financing, reimbursement, extension of time, by the Contracting Authority in accordance with the terms of this Contract.

"**Available Data**" has the meaning given in Article 19 (*Provision of Information by the Contracting Authority*) of this Contract.

"**Extra Land**" is the land (regardless of its status) that the Concessionaire temporarily needs in addition to the Project Territory and/or Additional Land, in order to carry out the Works and/or Services, in accordance with the conditions of this Contract.

"**Additional Land**" is the land (regardless of its status) that the Concessionaire permanently needs in addition to the other elements that constitute the Project Territory in order to carry out the Works and/or Services in accordance with the conditions of this Contract. When the Additional Land is approved, it is considered as part of the Project Territory for the effect of this Contract.

"**VAT**" is the value added tax, as provided in Law no. 92/2014 "*On value added tax in the Republic of Albania*" as amended, or any Law that substitutes it during the implementation of this Contract.

"**Service Locations**" are areas on or along the Road that, as the case may be, must be constructed or maintained to provide Users: a place to rest (including buildings intended for recreation); parking space; service points, including but not limited to the provision of beverages, food and fuel supply to the vehicle; as well as other necessary services. The Service

Locations shall also include sites with temporary installations, which can be used for the realization of various services by the Concessionaire Company.

**"Work"** means the Road, Tariff Areas, Maintenance Center, Operating Center, considered together. Further clarification, the territory of service location shall not be considered as part of the Work, road segment "Milot-Balldre" for the effect of this contract.

**"State Action Substantially Contrary to the Contract"** has the meaning given in Article 81.1 (*State Action Substantially Contrary to the Contract*) of this Contract.

**"Project Market Value"** has the meaning given in Article 103 (*Compensation for Contract Termination Due to Non-Fulfillment of the Concessionaire Company*) of this Contract.

**"Investment Value"** is the monetary value of the investments for the Works and all its components, in compliance with the Bid Documentation submitted by the Concessionaire, in the amount of \_\_\_\_\_EUR, VAT excluded.

**"Remained Contract Value"** is the monetary value for the operation and maintenance of the Work in compliance with the Bid Documentation submitted by the Concessionaire, in the amount of \_\_\_\_\_EUR, VAT excluded.

**"Contract Year"** is the full calendar year during the Duration of the Contract provided that:

- 1) The first year of the Contract is the time period from the Effective Date of this Contract until the following December 31; and
- 2) The last Year of the Contract is the time period from the last January 1<sup>st</sup> before the Contract Termination Date until the Contract Termination Date.

## **Article 2. Interpretation of the Contract**

The following interpretations shall be used in this Contract, unless the context otherwise requires:

- 2.1. a word used in the singular includes both the plural and vice versa. Reference to one gender includes the other gender;
- 2.2. the reference to a Person includes his descendants or Persons authorized by him under the Law;
- 2.3. a reference to any Article, paragraph or Appendix, unless expressly stated otherwise, is a reference to that Article, paragraph or Appendix to this Contract;
- 2.4. reference to this Contract or any other document contained in it, means a reference to any changes/amendments or additions to this Contract, as may occur from time to time;
- 2.5. the titles and numerical order used for the articles, paragraphs, sub-paragraphs, Appendices and table of contents are for reference only and will not affect the interpretation of this Contract;

**2.6.** a reference to each institution or decision-making body refers to the existing institution and decision-making body and if that institution or decision-making body ceases to exist, is restructured or shares responsibilities with other institutions or bodies, refers to the successor institution or decision-making body or institution or body inherits existing responsibilities or serves to perform functions and goals similar or the same as the existing institution or body;

**2.7.** the Appendices to this Contract form an integral part of this Contract;

**2.8.** the words "includes" or "including" shall be deemed to be followed by the words "without limitation" or "not limited to", whether or not they are followed by similar phrases or words;

**2.9.** any word, term, phrase or abbreviation beginning with a capital letter used specifically in this Contract or in any Appendix or other attached document shall have the meaning set forth in this Contract, if defined in Article 1 (*Definition of Terms*) above or in the relevant Appendix or document if defined therein;

**2.10** unless expressly provided otherwise in this Contract, should there be a direct conflict between any provision of the main part of the Contract, any Appendix or any document referred to in this Contract or Appendix, the order of priority shall be as follows:

- 1) this Contract;
- 2) its appendices;
- 3) any other document referred to in this Contract or any other document attached to this Contract.

### **Article 3. Object of the Contract**

Through this Contract, the Contracting Authority, authorized by the legislation in force, grants a Concession to the Concessionaire Company in the form of DBFOMT ("Design – Build – Finance – Operate – Maintain – Transfer") for the desing, financing, construction, rehabilitation, functioning, administration, operation, including without limitation to the exclusive rights of the Concessionaire Company to receive payment from Road Users and the maintenance of the Road "*Milot – Balldre*" for a term of 35 years (hereinafter "**Object'**"), as well as its transfer at the end of the Contract from the Concessionaire Company to the Contracting Authority, in accordance with the terms and conditions of this Contract.

### **Article 4. Concession / Exclusivity**

**4.1.** In accordance with the provisions of Article 3 (*Object of the Contract*) as above, starting from the Effective Date, the Contracting Authority grants to the Concessionaire Company, which accepts:

- a) All exclusive rights according to the provisions of this Contract, in relation to the Object, for the entire Concession Period;
- b) The right to Quiet Enjoyment within the terms specified in this Contract, for the purpose of implementing the Project;



c) All rights conferred on the Work, in accordance with the Law and this Contract;

d) To transfer to the Contracting Authority, at the end of the Duration of the Contract all the rights over the Products as well as to perform all the necessary actions for this purpose, as provided in this Contract.

**4.2.** This Concession Contract is a DBFOMT project (“*Design – Build – Finance – Operate – Maintain – Transfer*”). The Concessionaire, with the approval of the Contracting Authority, sets as a guarantee for financing in the financial institutions only its rights deriving from the Concession Contract.

**4.3.** To avoid any misunderstanding, the Parties agree that the Contracting Authority will retain ownership of the Site and of the Road throughout the Duration of the Contract. The Concessionaire Company has the right to register the ownership on its behalf of the Maintenance Center. The Concessionaire Company also agrees that the ownership right of the Concessionaire Company over the Maintenance Center is limited by the obligation of the Concessionaire Company not to alienate (sell, donate or transfer in any way) it, in whole or in part, in favor of the third parties. This restriction as well as the obligation of the Concessionaire Company to transfer the ownership right over and hand over the Maintenance Center in favor of the Contracting Authority shall be registered in the real estate register.

**4.4** Throughout the Duration of this Contract, the Contracting Authority, nor any other Relevant Authority, whether at the central or local level, shall not grant anyone the right, with or without remuneration, to operate, exploit, administer, or maintain the Work, the road axis Milot-Balldre and/or Service Locations, except in accordance with the provisions of this Contract. In the event that the Contracting Authority undertakes any action in violation of this Article, this circumstance shall be considered a violation of the provisions of this Contract and the Concessionary Company shall have the right to terminate it and claim the Damages.

## **Article 5. Concession Period**

**5.1.** Except in cases of early termination of this Contract, or extension of this Contract in accordance with its conditions, including, without limitation, Article 5.2 as below, the Concession Period shall be 35 (thirty-five) years, beginning from the Effective Date of the Contract and ends on the 35<sup>th</sup> anniversary of this date (“**Concession Period**”).

**5.2.** The Concession Period, in case the implementation of this Contract has been delayed because of the Relief Cause and of the State Action Substantially Contrary to the Contract, or for any other cause provided as such as per this Contract, or because of other changes of this Contract, may be postponed in compliance of the legal provisions proved in Articles 31, 32 and 33 of the Law Nr. 125/2013 “*On the Concession and Public Private Partnerships*” as amended, as per the definitions of this contract.

## **Article 6. Conditions Precedent**

**6.1.** After its signing by the Parties, this Contract enters into force with its approval by the Council of Ministers of the Republic of Albania and the publication of the approval decision in the Official Gazette of the Republic of Albania (hereinafter “**Effective Date**”).

**6.2.** After the Effective Date, taking into account the provisions of Article 6.4 as below, the

obligation of the Concessionaire Company to start the Works becomes effective on the date on which the last of the conditions mentioned below is fulfilled (**“Works Commencement Date”**):

a) Submission by the Concessionaire Company of the Contract Guarantee in accordance with this Contract;

b) Submission by the Concessionaire to the Contracting Authority of the Project Implementation within \_\_\_\_\_ Months from the Effective Date;

c) Approval of the Project Implementation by the Contracting Authority within the deadlines and in accordance with Article 34 (Project Documentation);

d) Issuance of Necessary Approvals by the Contracting Authority and other Relevant Authorities, in order to enable the start of the work regarding a Segment of the Work as per the Project Implementation;

e) Selection of the Independent Engineer by the Contracting Authority, according to the provisions of this Contract;

f) Identification of Objects for Expropriation by the Concessionaire Company and completion of Expropriation procedures by the Contracting Authority through the Relevant Authority, which are related to the implementation of the Implementation Project, aiming to make possible the starting of works regarding a Segment, Road or any other Work;

g) Delivery of the Project Territory by the Contracting Authority to the Concessionaire Company;

h) Delivery of a document on the financing of the Project, which will be provided by the Lenders, or the Financing Parties or the Concessionaire regarding the funds necessary for the realization of the Project.

**6.3.** The maximum deadline for the fulfillment of the above conditions by the Parties shall be no more than \_\_\_\_\_ Months from the Effective Date of the Contract, except for the cases defined in Article 7 (*Non-fulfillment of the Preliminary Conditions*) of this Contract.

**6.4.** After the Effective Date, the Concessionaire Company, may in its sole discretion decide to waive its right to seek the fulfillment of any of the above preliminary conditions from the Contracting Authority and/or Relevant Authority or by allowing its fulfillment with delay. This shall not be deemed a waiver of the rights of the Concessionaire Company under this Contract. In any case, when the Concessionaire Company decides to waive its right to seek the fulfillment of any of the above preliminary conditions from the Contracting Authority and/or allows its fulfillment with delay, this decision shall be notified in written to the Contracting Authority.

## **Article 7. Non-fulfillment of the Preliminary Conditions**

**7.1.** In the event that the preliminary conditions set forth in the Article 6 (*Preliminary Conditions*) as above are not fulfilled within \_\_\_\_\_ Months from the Effective Date of this Contract, the Parties shall meet to decide on a solution to fulfill the remaining preliminary conditions.

**7.2.** In case the remaining preliminary conditions are not fulfilled even after the expiration

of an additional period of 3 (three) Months from the fulfillment of the term of \_\_\_\_\_ Months from the Effective Date of this Contract, the Concessionaire Company proposes to the Contracting Authority a new action plan, which sets out new deadlines for meeting the preliminary conditions set out in this article, concrete actions for each Party, for the purpose of its approval within 10 days by the Contracting Authority. In the absence of communication for approval, this shall be considered approval in silence of the new action plan.

**7.3.** In case the remaining preliminary conditions have not been fulfilled yet, even after the expiration of the deadline agreed in the new action plan:

a) In case of non-fulfillment by the Contracting Authority of the preliminary conditions related to it, the Concessionary Company has the right to either (i) request the fulfillment of the relevant obligation, or (ii) terminate the Contract and upon submission of the request accompanied by the relevant documentation to receive as preliminary agreed the compensation, the costs of participating in the development of competitive/tendering procedures as well as the releasing and returning of the Contract Guarantee, if the latter has been submitted. The Contracting Authority must make the relevant payments within 30 (thirty) Working Days of receiving the request of the Concessionaire Company. The provisions of this paragraph shall not exclude the Concessionaire Company from the right to claim other Damages which will be determined in accordance with Article 132 (*Escalation and Dispute Resolution*) of this Contract.

b) In the case of non-fulfillment by the Concessionary Company of the preconditions due to the fault of the Concessionary Company, the Contracting Authority has the right to either (i) demand the fulfillment of the relevant obligation, or (ii) terminate the Contract and keep the Contract Guarantee, as pre-agreed compensation. The provisions of this paragraph do not exclude the Contracting Authority from the right to claim other Damages which will be determined in accordance with Article 132 (*Escalation and Resolution of Disputes*) of this Contract.

**7.4.** In the event that (i) both the Concessionaire Company and the Contracting Authority have not fulfilled any of the relevant Preliminary Conditions by the termination of relevant terms as per this Contract, and this non-fulfillment has occurred as a result of culpable acts or omissions of the Party in relation to the relevant condition belonging to that Party to fulfill it, and (ii) in the event that one of the Parties chooses to terminate this Contract in accordance with the provisions of the article 7.3 as per above, then this Contract shall terminate with immediate effect and:

a) Neither Party shall be responsible to the other Party for any payment regarding such termination; and

b) The Contracting Authority shall return the Contract Guarantee.

## **Article 8. Financial Closure**

**8.1** The parties agree that (i) the Concessionaire Company shall complete the Financial Closure and shall send to the Contracting Authority a notification regarding this no later than the date of fulfillment of the preliminary conditions specified in Article 6 (*Preliminary Conditions*) and Article 7 "Non-fulfillment of the preliminary conditions" as above; and (ii) the Concessionary Company may start the Works and continue with the implementation of the obligations and the enjoyment of the rights it has on the basis of this Contract even before the end of the deadline for performing the Financial Closure in order to enable the Concessionary Company to complete the

Works within the deadline and according to the conditions defined in this Contract. The Contracting Authority may, at its reasonable discretion, agree to extend this period, upon a written proposal from the Concessionaire Company.

**8.2** If within this period the Concessionaire Company fails to complete the Financial Closure, except for the cases addressed in Article 8.3 as below, then this Contract shall be terminated with immediate effect and:

a) Neither Party shall owe the other Party any payment in connection with such termination;

b) The Contracting Authority shall keep the Contract Guarantee.

**8.3** In the event that the Concessionaire Company fails to complete the Financial Closure as a result of an action or inaction of the Contracting Authority or a Relevant Authority, or a State Action Essentially Contrary to the Contract affecting the financial markets, then despite the fact that the Contracting Authority releases the Contract Guarantee, this does not exclude the right of the Concessionaire Company to claim compensation for the caused Damages.

**8.4** If the Contract is terminated in accordance with Article 8.2 as above, the Concessionaire Company shall be fully responsible for all costs of removing the equipment from the Project Territory

## **CHAPTER 2 DECLARATIONS, RIGHTS, OBLIGATIONS OF THE PARTIES**

### **Article 9. General obligations**

**9.1.** The Concessionaire has the exclusive obligation, in accordance with the provisions of this Contract:

a) to draft the final Project Documentation of the Road Design Implementation;

b) to carry out the Works within the term of 30 months as per the final Project according to the final Design-Implementation Project upon approval by the Contracting Authority (prioritizing the starting and completion of the alternative road);

c) to provide funding for the implementation of the Project Implementation;

d) to carry out the operation and maintenance of the Work (to the extent specified in this Contract) as well as the Project Implementation approved by the Contracting Authority, which has been drafted based on the Bid Documentation part of this Contract; and

e) to carry out the operation and maintenance of the Work (to the extent defined in this Contract) as well as the Project-Implementation approved by the Contracting Authority, which was drawn up on the basis of the Bid Documentation part of this Contract; as well as

f) to fulfill all the obligations provided in this Contract.

**9.2.** Contracting Authority:

a) shall make available to the Concessionaire Company the Available Data made and all the information, documentations, for the purposes of drafting the Design Implementation and

construction, rehabilitation, completion, operation and maintenance of the Road;

b) shall be engaged in the application and receipt of all Necessary Approvals related to the Project, the application and receipt of which belong to the Contracting Authority according to the legislation in force;

c) shall fully complete, through the Relevant Authority, the Expropriation procedures, which are related to the implementation of the Design Implementation Project, within the deadline defined in Article 7.2 of this Contract.

d) shall take all the appropriate administrative and financial measures to enable the timely execution of (i) the Payments by the Contracting Authority as defined in this Contract and in **Mutual Monitoring and Coordination Agreement, referring to the Operating Service** (ii) for Expropriations and (iii) Damage; and

e) shall fulfill all the obligations provided in this Contract.

#### **Article 10. Right to Subcontract**

**10.1.** The Concessionaire Company has the right to enter into Subcontracts for the implementation of the Project Works and any other type of contract, in order to realize the Object of this Contract in accordance with the regulation of subcontracting as provided by the Law no.125/2013 “*On Concessions and Public Private Partnerships*”, as amended. In all contracts, the Concessionaire Company is obliged to respect the terms of this Contract.

**10.2.** The Concessionaire Company must provide the Contracting Authority with the following information for the selected Subcontractor:

- 1) his name and address;
- 2) the purposes for which the proposed Subcontractor shall be contracted, including any services to be provided by the proposed Subcontractor;
- 3) the value of the Subcontract; AND
- 4) any further information reasonably requested by the Contracting Authority.

**10.3.** The Concessionaire shall select as Subcontractors Persons who demonstrate experience in the object of the subcontracted work or service. The Concessionaire is responsible for fulfilling its obligations under this Contract, regardless of whether the construction or maintenance works are carried out by the Concessionaire itself or the Construction or Maintenance Subcontractors.

**10.4.** To avoid any misunderstanding, within the meaning of the limitations set forth in paragraph 10.1 as above, (i) if the Works are performed by the Concessionaire, the latter shall not be deemed to be the Subcontractor, and shall not need to be taken for granted. Approval by the Contracting Authority and (ii) the National Road Operating Entity shall not be considered a Subcontractor.

**10.5.** Non fulfilment of the contract by the subcontractors or the escalation of any conflict between the Subcontractors and the Concessionaire Company, does not constitute a condition for nonfulfillment of the contract and shall not impede the implementation of the contract by.

**10.6.** The subcontracting shall not be done in any case without the preliminary written

approval for the Contracting Authority and the Concessionaire Company shall be fully liable for the realization of the contract, despite the behaviour of the subcontractor.

#### **Article 11. Services Location**

**11.1.** During the Concession Period, the Contracting Authority may issue a permit for the development and operation of the services location.

**11.2.** In case the services location exist in the Signing Date of this contract:

- a) Before the date of fulfillment of the preliminary conditions specified in Article 6 (*Preliminary Conditions*) as above, the Contracting Authority determines which Services will continue to function and which will be removed. In making such a decision, the Contracting Authority must take into account that in order for the existing Service Locations to continue their activity, they must meet the Albanian law requirements and in cases where the Albanian standards do not adequately address those elements of the relevant activity, the European ones. The Contracting Authority will discuss with the Concessionary Company and, as far as possible, will consider the observations and requests of the Concessionary Company, before deciding on such a determination;
- b) The Contracting Authority itself or through the Relevant Authorities shall be responsible for the removal of any existing Service Location. In any case, the Contracting Authority must remove the Services (if applicable) within 3 (three) months from the date of the decision to remove the existing Service Locations according to article 11.3, letter a.;
- c) Within 3 (three) months from the date of fulfillment of the preliminary conditions of this Contract, the Contracting Authority requests all owners of the existing Service Locations that will remain in the existing territories:
  - 1) To obtain all Necessary Approvals within 1 (one) year from the date of fulfillment of the preliminary conditions of this Contract.
  - 2) To ensure during the Concessionary Period that the Services continue to meet the Albanian standards and in cases where the Albanian standards do not adequately address those elements of the exercise of the activity, the European ones.

11.4 If the Contracting Authority or the Relevant Authority does not implement the plan of measures and the terms of the provisions defined in Article 11.3 above, and this prevents the progress of the Works and/or Services, it will be considered as a Cause of Relief.

#### **Article 12. Right of Monitoring by the Contracting Authority**

At any time during the Concession Period, the Contracting Authority or, as the case may be, the Relevant Road Authority may conduct inspections of the Concessionaire Company, including quality control of the provision of Services and of the Works Standard, in accordance with this Contract. The Concessionaire Company offers to the Contracting Authority any cooperation that may be requested by the latter in a reasonable manner (such as that of providing data upon request, the possibility for the Contracting Authority to participate in monitoring the progress of works, etc.). The Contracting Authority informs the Concessionaire about the results of these controls.

#### **Article 13. The right of intervention by the Contracting Authority**

**13.1.** If the Contracting Authority has reasonable information that it has:

- 1) a serious risk to the life or health and safety of Persons or Road safety;
  - 2) a serious risk to property or the environment; or
  - 3) an abuse of office provided by law;
- regarding the Works, operation and maintenance of the Road or the provision of Services, the Contracting Authority has the right to reasonably intervene in the Works, Road operation or provision of Services to remove such a risk by notifying the Concessionaire Company in advance as soon as possible before the intervention.

**13.2.** In case of an unreasonable or unauthorized termination by the Contracting Authority or a Relevant Authority, or in case of an authorized termination in the case of an Emergency Intervention (provided that this Emergency Intervention was not caused by the fault of the Concessionaire Company), which causes delays in Works, closure or suspension of operation of Works and/or other costs for it, then this will be Cause of Relief.

#### **Article 14. Contract Guarantee**

14.1. Before the signing of the Contract, the Contracting Authority gets from the most successful bidder the Guarantees required for the performance of the contract and security instruments as compensation for the damage that may be caused as a result of the failure of the concessionaires/private partners to fulfill the obligations provided for in the contract, in the form of the promise of payment, bank guarantee, corporate guarantee, promissory note, etc.

- a) Contract insurance shall be 5 % of the construction value, meanwhile after the construction period shall be up to 5% of the remained value of the contract.

#### **Article 15. Declarations of the Concessionaire and the Concessionaire Company**

**15.1.** The Concessionaire and the Concessionaire Company declare, guarantee, and undertake before the Contracting Authority that:

- a) are established and operate in accordance with the Law;
- b) to their knowledge, no event has occurred that would make the Concessionaire and the Concessionaire Company unable to meet their obligations and there is no fact or event that could lead to the non-fulfillment of the Concessionaire or Concessionaire Company; and
- c) upon signing this Contract, the Concessionaire or the Concessionaire Company has not performed any action prohibited by Law.

**15.2.** The Concessionaire and the Concessionaire Company further guarantee, declare and undertake before the Contracting Authority that, starting from the Effective Date:

- a) any commitment arising from the Project Documentation represents a valid and enforceable commitment of the Concessionaire and the Concessionaire Company, and each of the Project Documentation is in the form required by Law; And
- b) The Project documentation has been prepared and its implementation and performance by the Concessionaire and the Concessionaire Company does not conflict with the Law or the Act of Establishment or other internal documents of the Concessionaire Company.

## **Article 16. Commitments of the Concessionaire Company**

**16.1.** The Concessionaire undertakes that it will be made aware of the rights it will benefit and the nature and extent of the risks that will be undertaken under this Contract.

**16.2.** The Concessionaire shall collect the necessary information legally available and accessible within its means to meet its obligations under this Contract, if such information is available or made available by the Contracting Authority and/or Relevant Authorities, upon duly requested, including:

1) information regarding the nature, location and condition of the Project Territory;  
and

2) information related to Archaeological Sites or Cultural Heritage Sites, areas of archaeological, scientific or natural interest, conditions and opportunities offered by the site and the quality of existing structures.

**16.3.** The Concessionaire undertakes to apply to the Contracting Authority and the relevant Competent Authorities in accordance with the legal terms and conditions for obtaining the Necessary Approvals and Necessary Approvals of the Contracting Authority for the implementation of the Project in case the above approvals will be issued on behalf of the Concessionaire Company. In cases where they will be issued on behalf of the Contracting Authority, then the Concessionaire Company undertakes to make available to the Contracting Authority as soon as possible all the necessary documentation so that the latter can apply to the Relevant Authorities in accordance with the Law.

**16.4.** The Concessionaire Company undertakes to take all necessary steps according to the Law to protect the environment in Sites and/or Works and to limit as much as possible the potential property damages, as a result of pollution and/or other harmful environmental causes related to the implementation of this Contract, in accordance with the Environmental Management Plan. The Concessionaire will ensure (insofar as it is in its control) that air emissions, surface and underground discharges and the discharge and treatment of waste generated by the Concessionaire Company's activity in Sites and/or Works during the Duration of the Contract will be carried out in accordance with the Law and the Environmental Management Plan. To avoid any doubt, the Concessionaire Company is not responsible for the noise pollution and emissions caused by the realization of Works and / or Services.

**16.5.** The Concessionaire Company agrees that the Project Implementation proposed by the Concessionaire Company will be subject to the environmental impact assessment procedure in accordance with law no. 10440 dated 07.07.2011 "*On environmental impact assessment*", as amended.

**16.6.** The Concessionaire Company undertakes that its Subcontractors shall comply with the applicable legislation governing workplace safety and that the requirements related to it are fulfilled.

**16.7.** The Concessionaire Company undertakes to cooperate with any investigation carried out by the Contracting Authority, or on behalf of the latter, in connection with the violation of workplace safety or security of the activity for the performance of Works or Services.

## **Article 17. Declarations of the Contracting Authority**



**17.1.** The Contracting Authority declares and guarantees that:

a) Has followed all legal procedures related to the organization of competitive procedures, selection of the Concessionaire.

b) The content of the Contract does not result in any violation of any agreement with third parties, of any other Law of specific sectors, of manuals and recommendations given by other authorities under specific Laws, of any international agreement, treaty or convention, where the Contracting Authority and the Republic of Albania are parties or on the basis of which they have undertaken.

**17.2.** With regard to the adequacy of the Available Data to the Concessionaire and the Concessionaire Company, as well as to any other information provided to the Concessionaire or Concessionaire Company, the Contracting Authority shall take all necessary measures in a timely manner, in relation to the budget planning of financings that are the obligation of the Contracting Authority or that arise as its obligations, as a result of the implementation of this Contract.

**17.3.** The Contracting Authority shall not be liable to the Concessionaire Company for any damage that may occur in the Project Territory before the date on which the Delivery of the Project Territory is received. The Concessionaire Company shall not be liable for any changes in the Project Implementation, or delays in the execution of the Works, that will become necessary and arise as a result of deficiencies in the Project Territory that occurred during the period when the Contracting Authority had the administration and maintenance of the Project Territory and which could not be disclosed in accordance with the provisions of Article 30 (*Project Territory Inspection*).

**17.4.** If the Contracting Authority has given its consent or agreed to sign or amend the Project Documentation, to follow a certain action plan, or when it has expressly waived from a provision in writing, the Contracting Authority declares that it will not be entitled to file claims against the Concessionaire or the Concessionaire Company because the Concessionaire or Concessionaire Company has acted in compliance with the decisions of the Contracting Authority regarding the granting of consent or the waiver of any right of the latter.

#### **Article 18. Commitments of the Contracting Authority**

**18.1.** The Contracting Authority is committed to provide assistance to the Concessionaire Company with the Relevant Authorities, central or local, which have the authority to issue the relevant Necessary Approvals against the Concessionaire Company in order for the Relevant Authorities to provide the Concessionaire/Concessionaire Company with the relevant Necessary Approvals, in a timely manner and without delay in connection with the implementation of the Contract, as long as the latter has fulfilled its obligations for application in accordance with the Law.

**18.2.** From the Effective Date of this Contract and within a period of 12 (twelve) Months, the Contracting Authority undertakes to ensure at its own expense through the Relevant Authority for expropriations, the completion of the Expropriation process in order to enable the start of work related to with a Segment, Road or other Work immediately and without delay by the Concessionaire Company, in accordance with the terms set forth in this Contract. The Contracting Authority will have ensured at its own expense through the Relevant Authority for expropriations, the full completion of the process of Expropriations of plots, properties within the Squares, without any defects, within the deadline defined in Article 7.2 of this Contract.

**18.3.** The Contracting Authority throughout the duration of this Contract will ensure that the activity of the Concessionaire Company is not compromised by Third Parties and will take all measures to solve the problems that Third Parties will have in relation to the implementation of this Contract, especially related with issues of Expropriation, demolition of buildings in the Site, or other claims from Third Parties, as well as the coverage of expenses related to them.

**18.4.** The Contracting Authority guarantees that it will perform without delay and on time, all Payments by the Contracting Authority and other financial obligations towards the Concessionaire Company, provided for in this Contract. Likewise, the Contracting Authority guarantees that it will take all measures to cover the relevant costs that, according to the provisions of this Contract, belong to the Contracting Authority.

**18.5.** The Contracting Authority undertakes to make all reasonable efforts and to cooperate in good faith with the Concessionaire and/or the Concessionaire so that they meet the requirements of the Lenders in connection with the achievement of the Financial Closing, including entering into the Direct Agreement if required by the Concessionary Company, in accordance with the Financial Model as the case may be. The commitment according to this point does not consist of a commitment to take over or guarantee from the Contracting Authority the financial obligations towards the Lenders for the financing of the Project.

**18.6.** The Contracting Authority shall guarantee the Concessionaire Company, alone or when appropriate in cooperation with the other Relevant Authorities, the Quiet Enjoyment and access to the Site throughout the Duration of this Contract, including the right to open, build, exploit national or local access roads to the Site and/or the movement on these roads or other roads to the Site of the vehicles of the Concessionaire Company free of charge, with the exception of the national roads with tariff payment (“toll”) for which it will make the relevant payments.

**18.7.** The Contracting Authority undertakes, during the Term of the Contract, to make its best efforts to assist the Concessionaire Company in fulfilling the obligations under this Contract and in accordance with it, as well as not to create any obstacles against the Concessionaire Company in relation to implementation of the Contract.

**18.8.** The Contracting Authority shall take all measures in cooperation with the Relevant Authorities to provide the Concessionaire Company with landfills for the disposal of waste in connection with the Works to be carried out in the Site and shall make every effort to assist the Concessionaire Company in settling any dispute with third parties in connection to them. The Contracting Authority will cooperate with the Concessionaire for the selection of these landfills so that (i) they are at a reasonable distance from the Project Territory, so that the Concessionaire Company does not incur unreasonably additional costs for the transport of waste (inert, soil, etc.) and (ii) not to impede the approved development plans of the Relevant Authorities that own the land where the landfill is planned to take place. The transportation costs will be borne by the Concessionaire Company.

#### **Article 19. Provision of Information by the Contracting Authority**

**19.1.** In the Bid Documentation, the Contracting Authority, within its possibilities, has made available to the Concessionaire Company materials and documents related to the Project and the Project Territory ("**Available Data**").

**19.2.** The Contracting Authority shall make reasonable efforts to make available to the Concessionaire any other material which may fall into its possession during the Duration of the Contract and which is of the type which would have been made known if it had

existed in the time of submission of available data and having effect for the implementation of the Concession Contract by the Concessionaire Company. Such additional materials are considered Available Data at the time they are provided (but not early).

## **Article 20. Collaboration and documentation**

**20.1.** The Concessionaire Company has the obligation to cooperate with the Contracting Authority and to implement the Works as well as relevant commitments undertaken according to the offer of the concessionary, as the latter are finally reflected in the Project Implementation submitted to the Contracting Authority.

**20.2.** Except as otherwise provided in this Contract and / or when the action and omission of the Concessionaire Company is directly dependent on and / or results from an action and / or omission of the Contracting Authority, the Concessionaire Company shall not take any action through of which part of the final Project would become invalid or be altered (by waiving it, failing to act, giving notice of its termination, or in any other form), without the express written consent of the Contracting Authority.

**20.3.** The Contracting Authority in all cases cooperates in good faith and offers collaboration to the Concessionaire or the Concessionaire Company.

**20.4.** If any action required to be performed by the Concessionaire under this Contract may be performed only by the Contracting Authority and / or any Relevant Authority involved but not limited to deviation and / or traffic restriction on (i) Roads or (ii) to the Site, the Contracting Authority agrees that, upon the written request of the Concessionaire Company, either to perform such an action on behalf of the Concessionaire Company, or to grant the Concessionaire a power of attorney or any other right, if a such a thing is allowed by the Law, to enable the Concessionaire Company to perform such an action itself. In particular, in order to guarantee the Road safety of third Persons and the timely progress of the Works, the Contracting Authority shall take all measures that, in cooperation with the Relevant Authorities, grant the Concessionaire Company unrestricted access, including where it is possible and in cooperation with the Relevant Authorities, traffic restriction in the relevant segments to be constructed the Milot – Balldre Road. Failure to perform these actions by the Contracting Authority, which will be accompanied by delays in the implementation of the obligations of the Concessionaire Company and/or costs for it, will be considered a Cause of Relief.

## **Article 21. Representatives of the Parties**

**21.1.** For the effect of this Contract, the Representative of the Contracting Authority is a Person authorized to represent the Contracting Authority in relation to the performance of this Contract, notified to the Concessionaire Company in writing by the Contracting Authority.

**21.2.** The actions or instructions of the Representative of the Contracting Authority, in so far as they are provided herein, are considered actions or instructions of the Contracting Authority, unless the Contracting Authority notifies the Concessionaire Company in writing at least 10 (ten) Business Days in advance that an action or instruction assigned is not an action or instruction of the Contracting Authority.

**21.3.** Any request to provide information or documents to the Contracting Authority under the Contract is a requirement that such documents be disclosed to the Representative

of the Contracting Authority, unless the Contracting Authority notifies the Concessionaire of another Person, or institution to whom such documents should be sent.

**21.4.** The Representative of the Concessionaire Company is a Person authorized to represent the Concessionaire Company in connection with the implementation of this Contract.

**21.5.** The actions or instructions of the Representative of the Concessionaire Company, in so far as they are provided herein, are considered actions or instructions of the Concessionaire Company, unless the Concessionaire Company notifies the Contracting Authority that a particular action or instruction is not its action or instruction.

**21.6.** Either Party may replace the respective Representative by giving written notice to the other Party at least 10 (ten) Business Days in advance.

## **Article 22. Project Implementation Unit**

**22.1.** The Contracting Authority will establish the Project Implementation Unit which will take care of the successful implementation of the Project. The Contracting Authority will complement the PIU personnel with appropriate technical and administrative personnel.

**22.2.** The Head of the Project Implementation Unit may be the Representative of the Contracting Authority or another Person designated by the Contracting Authority pursuant to this Article. If requested by the Contracting Authority or the Project Implementation Unit, the relevant Road Authority may monitor the site implementation of the Works and Services of this Contract, for which it will report respectively to the Contracting Authority or the Project Implementation Unit that has submitted the request.

## **CHAPTER 3 OWNERSHIP AND USE OF PROPERTY**

### **Article 23. Project Territory**

**23.1.** "Project Territory" is:

a) Land (regardless of its status, land, agricultural land, meadow, etc.) on which the Products will be realized, entry and exit areas and connection roads with the Road, territory of the alternative road as per the meaning in article 34.3 of the Contract, the area or areas in which will be located and in which will be performed the activities and Services related to the construction, operation and maintenance of the Products; and

b) Additional Land.

**23.2.** The Contracting Authority declares that it will take the necessary measures to be the legal possessor of the Project Territory where the Road will be laid, and will Deliver the Project Territory to the Concessionaire Company, in accordance with the deadlines provided in this Contract and, however, before the Works Commencement Date. Notwithstanding the provisions of this paragraph, the Contracting Authority shall permit the Concessionaire Company to enter into all parts of the Project Territory for the purpose of verifying its conditions, starting from the Signing Date.

**23.3.** The Contracting Authority guarantees that it will perform the Project Territory Delivery to the Concessionaire Company free from any encumbrance or rights of third parties. In accordance with the provisions of Article 7 (*Non-fulfillment of the Preliminary*

*Conditions*) of the Contract, any violation by the Contracting Authority of this provision or the existence of the rights of third parties, will be considered as the case may be as Cause of Relief.

**23.4.** The Contracting Authority allows the Concessionaire Company to enter and exit the Project Territory and allows it to use that territory, including land rights and servitudes for transmission lines and public infrastructure or transport networks, without hindering it throughout the Duration of the Contract.

**23.5.** The Contracting Authority acknowledges that throughout the Duration of the Contract, it will not transfer the Project Territory or any part thereof, or any related interest, except in accordance with this Contract.

**23.6.** The costs and expenses of the Project Territory Delivery and the granting of the Rights of the Concessionaire Company shall be borne by the Contracting Authority. The Contracting Authority agrees that any costs, damages, obstacles or delays in the implementation of this Contract by the Concessionaire Company, after being certified by the Independent Engineer, for reasons related to Expropriations or taking control of the Project Territory, by the Authorities Relevant or third parties will be a Cause of Relief, unless this delay is caused by the faulty actions or omissions of the Concessionaire Company.

**23.7.** All expenses or Taxes (if any), for the registration of ownership, or use of the Project Territory in SCA and / or other costs deriving from legal and sub-legal acts related to the registration of ownership of this land or its use, will be borne by the Contracting Authority.

#### **Article 24. Additional Land and Extra Land**

**24.1.** If the Concessionaire Company requests any Additional Land for the Project Territory, in order to fulfill any of its obligations under this Contract, land which then does not necessarily become part of the Road, insofar as the Independent Engineer certifies that such Additional Land is required by the Concessionaire Company to fulfill its obligations under this Contract (and that the relevant obligations cannot be complied with through the use only of the Project Territory, or of the land currently owned and / or administered by the state), then the Contracting Authority provides an Additional Land as soon as practically possible. All costs required during the process of obtaining Additional Land through Expropriations, will be paid by the Contracting Authority. Delays by the Contracting Authority to implement the obligations of this Article shall be Cause of Relief.

**24.2.** Upon receipt of the rights or approval to use the Additional Land by the Concessionaire Company, such rights or such benefit to use the Additional Land, which remains with the Concessionaire Company until the Contract Closure Date, unless it has been agreed in advance to another date, will be transferred to the Contracting Authority on the Contract Closure Date or on the other date agreed between the parties.

**24.3.** When the Concessionaire Company seeks to temporarily use Extra Land, other than the Project Territory, in order to fulfill any of its obligations under this Contract, insofar as the Independent Engineer certifies that such Extra Land is required to meet its obligations under this Contract, (and that the relevant obligations cannot be complied with through the use only of the Project Territory, or of the land currently owned by the state, or of the Additional Land), the Contracting Authority through the Relevant Authority, at its own expense, carries out the procedure of taking into temporary possession of this Extra Land according to the legislation in force for Expropriations.

## CHAPTER 4 INDEPENDENT ENGINEER

### Article 25. Selection of Independent Engineer

**25.1.** The Contracting Authority shall prepare the public procurement documentation required for the selection of the Independent Engineer. Such documentation shall contain but shall not be limited to:

1) The scope of work of the Independent Engineer, which will be based on the provisions contained in Appendix 5 (*Main Duties of the Independent Engineer*) as amended and expanded by the Parties;

2) Criteria on which the Independent Engineer will be selected; and

3) Essential contract provisions for the appointment and duties of Independent Engineer, according to the key duties set out in Appendix 5 (*Main Duties of the Independent Engineer*).

**25.2.** The Contracting Authority will make all possible efforts to contract the Independent Engineer within 12 (twelve) Months from the Effective Date of this Contract, but in any case within the extended deadlines in accordance with the provisions given in Article 7 (*Non- fulfillment of the Preliminary Conditions*). The selection of the Independent Engineer will be made in accordance with Law No. 162/2020 "On Public Procurement", amended, based on the documentation approved in accordance with Article 25 (*Selection of the Independent Engineer*). The parties agree that the Independent Engineer will exercise his functions throughout the Concession Period. The initial Independent Engineer agreement is made for at least a period of time until the end of the Defects Liability Period.

**25.3.** In the event that the Independent Engineer is not appointed within the time specified in this Article, or in the event that his activity in function of the implementation of this Contract and of the Contract of the Independent Engineer is suspended, prohibited or abandoned for any reason, the Parties agree that the Contracting Authority or any person authorized / appointed by it (Temporary Supervisor/Engineer) will perform the function of Independent Engineer until the appointment of the Independent Engineer or its substitution.

**25.4.** The Contracting Authority is obliged to appoint and / or replace the Independent Engineer within 30 (thirty) calendar days from the notification that the Concessionaire Company will send to the Contracting Authority for the appointment or substitution of the Independent Engineer. In case of unjustified delays by the Contracting Authority in the appointment or substitution of the Independent Engineer which cause delays in the deadlines for the performance of Works by the Concessionaire Company, then the latter will benefit from the extension of these respective deadlines in the same duration of delays.

**25.5.** The Independent Engineer performs his obligations in accordance with the provisions of the Appendix 5 (*Main Duties of the Independent Engineer*) of this Contract. Among other things, the Contracting Authority concludes a Contract with the Independent Engineer, with the object, rights and obligations of the Independent Engineer

## **Article 26. Contract with Independent Engineer**

The contract of the Independent Engineer contains (among others) the following conditions:

- a) Costs incurred in connection with the selection, appointment and work of the Independent Engineer shall be borne by the Contracting Authority;
- b) The Independent Engineer fulfills his reporting obligations to the Contracting Authority and the Concessionaire Company directly and simultaneously;
- c) The scope of services and the entirety of the rights and obligations of the Independent Engineer are in accordance with the Contract, which contains the main obligations of the Independent Engineer set out in Appendix 5 (*Main Duties of the Independent Engineer*);
- d) Prior to resolving a dispute, the Independent Engineer shall give the Contracting Authority and the Concessionaire Company the opportunity to express their opinions on the matter;
- e) The Independent Engineer provides his services, at any time and in all circumstances, in accordance with the provisions of this Contract as well as the Contract of the Independent Engineer and does so impartially and independently;
- f) The Concessionaire Company has the right to consult with the Independent Engineer regarding all aspects of any matter relating to the Works or any Capital Repair and as per the yearly calculation of the Tariff as per the Article 72.
- g) The Concessionaire Company has the right to request from the Contracting Authority the initiation of procedures for the termination of the Contract of the Independent Engineer, or the substitution of the Independent Engineer in case of violations of the provisions of the Contract or the Contract of the Independent Engineer by the latter, as well as in case of unjustified and repeated obstacles of the Independent Engineer towards the Concessionaire Company, in fulfilling the obligations of the latter under this Contract.
- h) In case of early termination of the Contract of Independent Engineer by the Contracting Authority, the latter will notify the Concessionaire Company in advance 30 (thirty) Business Days, presenting together with the written notice the reasons for early termination of the Contract with the Independent Engineer.

## **Article 27. Inspections of the Independent Engineer**

- 27.1.** The Independent Engineer conducts inspections to verify and follow the performance of Works by the Concessionaire Company according to the Project Implementation.
- 27.2.** During the Construction Period the Independent Engineer will control and supervise the Works. Such control includes monitoring the activity at each stage of the work, with the purpose to ensure that the Works are carried out in accordance with the quality requirements of the Contracting Authority, the Standards, as well as in accordance with the approved Project Implementation.

**27.3.** The Independent Engineer has the right to attend the meetings for the progress of the Works, which take place between the Concessionaire Company and the Construction Subcontractors, and to receive the relevant notifications about the time and place of such meetings.

**Article 28. Non-compliance with the Determinations of the Independent Engineer**

**28.1.** If any of the Parties is dissatisfied with the determinations/ work of the Independent Engineer, then this Party shall notify the other Party within 15 (fifteen) Business Days of receipt of the relevant notice from the Independent Engineer, provided that under no circumstances the Concessionaire Company has the right to suspend, stop, or otherwise interrupt the Works during the process of resolving such a dispute, with the exception of works that are directly affected by the dispute, as well as works whose completion or performance depends directly on the outcome of the settlement of dispute. In case one Party is dissatisfied with the decision of the Independent Engineer, Article 132 (*Escalation and Dispute Resolution*) of this Contract applies, except in cases related to decisions for a Cause of Relief, in which case the provisions of Article 80.1 (*Cause of Relief*) will apply.

**28.2.** For the avoidance of doubt, the Concessionaire is not responsible for the non-fulfillment of any of its obligations or responsibilities, in case this non-fulfillment comes due to the non-fulfillment of obligations by the Independent Engineer, in accordance with this Contract as well as the Independent Engineer Contract.

**Article 29. Substitution of Independent Engineer**

**29.1.** In the event that the activity of the Independent Engineer in function of the implementation of this Contract and the Contract of the Independent Engineer is suspended, prohibited or abandoned for any reason, the Concessionaire Company and the Contracting Authority repeat the process described in Article 25 (*Selection of Independent Engineer*) for its substitution.

**CHAPTER 5 CONSTRUCTION, TERRITORY OF PROJECT WORKS AND LAND CONDITIONS**

**Article 30. Project Territory Inspection**

**30.1.** Without prejudice to the benefits or the Rights of the Concessionaire Company under this Contract, the Concessionaire Company guarantees that:

- a) as far as possible has inspected and controlled the Project Territory and surrounding areas and, where applicable, all structures located throughout the Project Territory area;
- b) as far as possible, taking into account and using ordinary professional care as well as Good Industry Practices, is known and made aware of (i) the nature of climatic, hydrological, geological, ecological, environmental and general conditions of Project Territory and its surroundings, (ii) the nature of the land and subsoil, including all subsurface conditions (iii) the form and nature of the Project Territory, (iv) the risk of damage to or damage to adjacent property, or the risks affecting the Project Territory and the owners of those properties, (v) the nature of the materials (natural



or not) to be excavated, and (vi) the nature of the Project, the work, plant and materials required for the Project.

- 30.2.** The Contracting Authority is not responsible before the Concessionaire Company for any inaccuracies, omissions, inadequacies for any purpose, or for insufficiency of any kind, whatsoever, of any topographic survey, which the Contracting Authority submits and makes available or approves to the Concessionaire Company, when the ascertainment of these deficiencies with negative effects on the Concessionaire Company would be easily possible to be identified by the Concessionaire / Concessionaire Company exercising ordinary professional care as well as in respect of the Good Practices of the Industry.

**Article 31. Archaeological objects or cultural heritage objects**

- 31.1.** During the drafting phase, the Project Implementation must be submitted to the National Council for Cultural and Material Heritage for consideration and decision-making.
- 31.2.** In case of discovery of any Archaeological Objects or Cultural Heritage Objects in the Project Territory, after the date on which the Contracting Authority Delivered the Project Territory to the Concessionaire Company, or in cases where excavation for Archaeological Objects or Cultural Heritage Objects has begun prior to the signature of this Contract and is not completed at the time of Project Territory Delivery, the Concessionaire Company, as the case may be, performs the following actions:
- a) immediately notifies the Contracting Authority as well as other Relevant Authorities and takes all necessary steps required by Law to an operator performing works related to the Archaeological Objects or Cultural Heritage Objects;
  - b) take such steps as may be required by Law by any Relevant Authority, which may include the interruption and non-completion of Works that may impede the excavation of the Archaeological Objects or Cultural Heritage Objects, or which may have any consequences on the Archaeological Objects or Cultural Heritage Objects in any way; and
  - c) take all reasonable steps to preserve the Archaeological Objects or Cultural Heritage Objects in the same position and condition in which they were found.
- 31.3.** Upon notification of the Concessionaire Company, the Contracting Authority shall inform the Relevant Authorities and make every reasonable effort to ensure that they expeditiously and in a coordinated manner explore the Archaeological Objects and Cultural Heritage Objects in relation to these Sites.
- 31.4.** In case the report of the Relevant Authorities shows the possibility of removing Archaeological Objects or Objects of Cultural Heritage from the Sites, the Contracting Authority must pay all the costs of removing the Archaeological Objects and/or Objects of Cultural Heritage.
- 31.5.** In the event that the written report of the Relevant Authorities indicates that the Works cannot continue in the Square or Segment in which the Archaeological Objects or Cultural Heritage Objects were discovered, the Contracting Authority may decide to grant the Concessionaire Company another plot of land (which will be returned to the Additional Plot), which ensures the practical realization of the Contract Object with similar

characteristics in the shortest possible time, and to suspend all deadlines until the Concessionaire Company is placed in the same conditions as it was before the suspension of the Works as above.

- 31.6. The Contracting Authority and/or the Relevant Authority shall pay the costs of the transfer of the Works for the replacement of the relevant Square or Segment, provided that the Concessionaire Company provides all reasonable assistance to help the Contracting Authority minimize the relevant costs and delays.
- 31.7. If there is any delay in the performance of the Works as a result of excavations for the discovery or removal of Archaeological Objects or Cultural Heritage Objects, or of any other necessary work performed in connection with the Archaeological Objects or Cultural Heritage Objects discovered either before the Project Territory Delivery (when such work was not completed prior to the Project Territory Delivery), or which was discovered after Project Territory Delivery, then this delay will constitute a Cause of Relief.
- 31.8. All Archaeological Objects or Cultural Heritage Objects are the property of the Republic of Albania.

#### **Article 32. Actions in accordance with the Law**

During the Duration of the Contract the Concessionaire Company will act in full compliance with the Law and the requirements of the Necessary Approvals of the Contracting Authority.

#### **Article 33. Existing Permits and Necessary Approvals of the Contracting Authority**

- 33.1. The Contracting Authority approves to the Concessionaire Company all the Necessary Approvals of the Contracting Authority, which are available and within the competence of the Contracting Authority, and makes every effort for the Relevant Authorities to do the same with the Necessary Approvals that are within their competence, immediately after the application of the Concessionaire, in order for the latter to commence and complete the Works in accordance with the Project Implementation, as long as the Concessionaire Company has fulfilled the obligations in compliance with the law.
- 33.2. The Contracting Authority undertakes to support the Concessionaire Company for the provision and issuance of the Development Permit for the entire Project, or in parts for separate phases of Construction Works, according to the selection and application for the relevant Necessary Approvals and / or Necessary Approvals of Contracting Authority, including but not limited to the construction permit / permits, for the purpose of commencing the Works immediately and without delay by the Concessionaire Company, as well as the issuance of the relevant Certificate of Utilization (s) issued by the relevant Authority in the field of territorial development.
- 33.3. In case the Necessary Approval and / or Necessary Approval of the Contracting Authority, in order to commence and continue the Works in accordance with the Project Implementation, are not given within the deadlines set by the Law or this Contract, then this will be considered as a Cause of Relief except when the Concessionaire Company has not complied with the relevant legal requirements and formalities.

- 33.4. In the event that an existing permit or the Necessary Approval of the Contracting Authority or of a Relevant Authority is withdrawn, revoked, amended (not at the request of the Concessionaire Company), suspended or otherwise declared invalid, due to a wrongful act or omission that did not occur as a result of the actions and / or omissions of the Concessionaire Company, then this will be considered as a Cause of Relief.
- 33.5. The Contracting Authority will be responsible for applying for and obtaining all the Necessary Approvals issued in its name and on its behalf. Supporting documentation for these applications is prepared by the Concessionaire Company. The Concessionaire Company will be responsible for the application and fulfillment of all legal requirements and formalities required for obtaining all additional permits and necessary approvals (if required after initial permits and approvals) near the Contracting Authority or Relevant Authorities, only in cases when the application and / or obtaining of these additional permits or approvals is done in the name and on behalf of the Concessionaire Company, or the additional documentation must be submitted also in the name of the Concessionaire Company.
- 33.6. The Contracting Authority guarantees and commits that it will make every effort to assist the Concessionaire in obtaining all the Necessary Approvals, as well as will make every effort to ensure that, subject to compliance by the Concessionaire with all requirements and legal formalities, Necessary Approvals to be issued and approved by the Relevant Authorities. In case of delays in the implementation of the obligations of the Concessionaire Company under this Contract, caused as a result of non-issuance or delays in issuing the Necessary Approvals by the Relevant Authorities or the Contracting Authority, not through the fault of the Concessionaire, then these delays may constitute a Cause of Relief.

#### **Article 34. Project documentation**

- 34.1. In the Bid Documentation, the Concessionaire Company has made available to the Contracting Authority the track and other information related to the Project (“**Project Idea**”). The Concessionaire Company has the right to modify the design and Construction Sketches during the drafting of the Project Implementation.
- 34.2. The final detailed design will be considered in this Contract as the Implementation Project (hereinafter referred to as the” **Implementation Project**” and together with the Project Idea and Construction Sketches (“**Project Documentation**”), and will become an integral part of this Contract. In case of non-compliance with the Project - Idea, the approved Draft Implementation shall prevail.
- 34.3. The Concessionary Company designs the Project-Implementation in such a way that it is in accordance with: a) the Bid Documentation and b) the alternative road (category C at a distance of no more than 1 km from the axis of the main road Milot-Balldre, agreed with the contracting Authority and the Relevant Authority responsible for the roads). The Concessionary Company ensures that all detailed and final Construction Sketches of the design within the Project-Implementation are in accordance with the requirements of the Contracting Authority and the Relevant Authority responsible for the roads, as well as the rules defined in the relevant legislation for the design. The Contracting Authority is maximally engaged and makes efforts to obtain all the Necessary Approvals for the Project-Implementation.
- 34.4. The Project Implementation Approval, as a rule, will follow these steps:

- a) The Concessionaire submits the Project Implementation to the Contracting Authority as a rule within 3 (three) Months from the Effective Date of the Contract.
- b) Within 20 (twenty) Working Days from the submission of the Project-Implementation by the Concessionaire Company, the Contracting Authority sends the Project-Implementation for technical opposition to the Relevant Authority. The Relevant Authority within 20 (twenty) Working Days will send to the Contracting Authority the technical opposition of the Project - Implementation of the Concessionary Company. The receipt of technical opposition should not exceed the deadline of 45 (forty-five) Working Days from the date of submission of the Implementation Project of the Concessionary Company to the Contracting Authority.
- c) Within 20 (twenty) Business Days from receiving the technical opposition from the Relevant Authority, the Contracting Authority sends the Project Implementation and the technical opposition for review and approval to the Relevant Authority responsible for the roads.
- d) The Relevant Authority must express and submit its comments regarding the Project Implementation to the Contracting Authority within 30 (thirty) Business Days.
- e) Within 20 (twenty) Business Days from receiving the comments regarding the Project Implementation from the Relevant Authority, the Contracting Authority makes its comments on the documentation of the Project Implementation, if any, and communicates them to the Concessionaire Company. The comments of the Contracting Authority are related only to the cases when the Project Implementation does not comply with the offer of the Concessionaire, as well as with the Law in force. If the Contracting Authority and / or the Relevant Authority have no comments regarding the Project Implementation, then the Contracting Authority will send its approval within the same term defined in the preceding sentence.
- f) In the event that the Contracting Authority or Relevant Authority submits comments regarding the Project Implementation, then the Parties and / or the Relevant Authority will meet within 15 (fifteen) Business Days of receiving the comments from the Concessionaire Company to discuss the submitted comments and to decide on their applicability to the Implementation Project, if required by the Concessionaire company.
- g) The Concessionaire Company has 30 (thirty) Business Days from the date of the meeting (or, if it has not requested a meeting, from the day of receiving comments) to arrange the Implementation Project in accordance with the comments and to submit the regulated Implementation Project to Contracting Authority.
- h) After submission by the Concessionaire Company, the Contracting Authority has a deadline of 20 (twenty) Business Days from the date of submission of the Implementation Project, to approve the latter. If the Contracting Authority does not express itself within a period of 20 (twenty) Business Days, then this will constitute a Cause of Relief.

### **Article 35. Construction**

- 35.1.** The Concessionaire Company will perform the Works in accordance with the construction period, the Project Implementation as well as in accordance with the Standards, except in cases of delays that may occur in accordance with the provisions of this Contract.

**35.2.** The Concessionaire Company will perform and complete the Works:

- a) subject to changes that may occur under the provisions of the Contract, in accordance with the deadlines proposed in the Implementation Project;
- b) in accordance with the provisions of this Contract, requirements, Standards, its proposals for Works and Good Industry Practices;
- c) in such a way that it can ensure the receipt of exploitation permits in connection with the execution of the Project Implementation and construction of the Road, no later than the final date of the exploitation permit;
- d) using exclusively materials and equipment for the Works, which have been professionally selected based on Good Industry Practices in accordance with the requirements and Standards; and
- e) in accordance with the rules of technical safety at workplace and Law Framework.

**Article 36. Special circumstances during the construction phase, extension of the deadline for completion of works**

**36.1.** The parties acknowledge and agree that the processes and deadlines for the obligations provided by the above provision cannot be accurately predicted from the Signing Date due to the complexity of this Project, successful completion of processes such as Expropriation, issuance of Development Permit, Necessary Approvals, as well as overlaps of processes and actions at each stage and Segment of the Project (including the consequences that any extension of the deadline of such processes, whether or not provided by law, may have on other processes) and therefore:

- a) decide that the fulfillment of the obligation by the Concessionaire Company or the Contracting Authority will always be judged taking into account the specific circumstances and facts and, as a result, its delays will not cause the termination of this Contract, the disproportionate imposition of penalties, or other measures, which put the Concessionaire Company in financial difficulty, or adversely affect the development of the Project, if such delays are justified according to the circumstances on a case-by-case basis, and
- b) in the event that such delays are not the fault of the Concessionaire Company or the Contracting Authority, all time limits for subsequent actions, which are logically subsequent to those abovementioned according to the stages of the Contract, shall be considered to extend the Duration of the Contract with a period lasting as the delay mentioned above, in accordance with the procedures of Cause of Relief.

**36.2.** The Works Completion Date that is planned for each Product separately, or for the Project as a whole, will be extended, in connection with that Product or as the case may be for the Project as a whole, without holding the Concessionaire Company liable, in the event of occurrence of a Force Majeure Event and / or an event that is a Cause of Relief and / or an event that is a State Action Substantially Contrary to the Contract, in accordance with the provisions of this Contract, the effect of which directly or indirectly adversely affects in relation to that Product or to the Project as a whole.

**36.3.** In case, when the extension of the deadlines is done for the reasons listed in Article 36.2 as

above, the Contracting Authority cannot make the Concessionaire Company liable and cannot request or apply penalty, or request for compensation against the latter.

- 36.4.** Notwithstanding any other provisions in this Contract, the Concessionaire or Concessionaire Company shall not be liable for damages, repairs and delays in the implementation of the Works, which have come as a result of the Project Implementation changes requested by the Contracting Authority, when it is attested that the Concessionaire or the Concessionaire Company have taken all the measures to realize within the deadline and with quality.
- 36.5.** In cases of such situations provided for in Article 36.4 as above, upon approval by the Independent Engineer, any delay or cost to the Concessionaire as a result of such events and elements shall be deemed, as the case may be, as a Cause of Relief.

### **Article 37. Hazardous Materials**

- 37.1.** In case of detection of any dangerous, toxic, or contaminated material or substance under, above and / or in the Site ("**Hazardous Materials**"), the Concessionaire Company shall immediately notify the Relevant Authority and the Contracting Authority and take all necessary steps to guarantee the safety of people and property.
- 37.2.** The Contracting Authority, in cooperation with the Concessionaire Company, takes all necessary steps to remove and / or neutralize such materials or substances (in accordance with approvals, Standards and the Law). For the purpose of removing and / or neutralizing such materials or substances, the Concessionaire authorizes the Relevant Authority to enter the Project Territory and follow the instructions of the Relevant Authority.
- 37.3.** If during the performance of the Works, the Concessionaire Company discovers in the Project Territory Hazardous Materials, that (i) have not been brought to the Project Territory by the Concessionaire Company or any Concessionaire Party, or (ii) the Concessionaire Company did not have a reasonable opportunity to have identified or detected them before the date of signature either from the Available Data or from the visual investigation of the Project Territory and from the investigation of any external signs on the surface, then the discovery in the Site of such unpredictable materials or substances, dangerous, toxic or polluted, in case of damages or delays to the Concessionaire Company, will be considered as a Cause of Relief.

### **Article 38. Public infrastructure networks**

- 38.1.** If any network of public infrastructure under, above and / or in the Site prevents the performance of Works or if any of the activities of Works represents a real risk for the operation of these networks, the Concessionaire Company immediately notifies the Contracting Authority, which in consultation and with consent (if necessary), with the relevant owner / user or operator of the public infrastructure and in cooperation with all Parties and Relevant Authorities, ensures that the infrastructure is relocated, removed, repaired and / or restored, within 3 (three) Months and at no cost by the Concessionaire Company for the cost of relocating, removing, repairing and / or re-establishing them elsewhere.
- 38.2.** If the relocation, removal, repair or re-establishment of public infrastructure is not enabled within the above deadline from the date of notification to the Contracting Authority, this will be considered as a Cause of relief. The Concessionaire Company

may, with the consent of the Contracting Authority and after having agreed with it and with the Independent Engineer on the costs, quality and timeline of the performance of Works, bear at its expenses the costs for these operations, but they will be reimbursed by the Contracting Authority in cooperation with other Relevant Authorities, which have in administration or ownership these public infrastructures. With respect to these reimbursable costs, the Contracting Authority guarantees that payment will be made by itself or the Relevant Authority upon the request of the Concessionaire Company as well as by the submission by the latter of the relevant documentation proving the cost and the relevant invoice / s and approval of the Independent Engineer, within 60 (sixty) Business Days from the submission of invoices to the Contracting Authority.

- 38.3.** In the event that during the performance of the Works in the Project Territory any public infrastructure is discovered and when such public infrastructure could not have been normally discovered by the Concessionaire Company before the Signature Date of this Contract by (i) Available Data, or (ii) careful investigation of any external signs of structural elements in the Project Territory, then discovery of such unpredictable public infrastructure will be considered as Cause of Relief.

#### **Article 39. Necessary approvals**

- 39.1.** In case of necessity, for all works related to removal, installation or replacement, mentioned in Article 37 (*Hazardous Materials*) and Article 38 (*Public Infrastructure Networks*) above, in case the Concessionaire Company is who will perform these Works, then the Concessionaire Company must obtain from the Relevant Authority, all the Necessary Approvals and submit the requests accompanied by the necessary supporting documentation, for the issuance of the appropriate approvals. The Contracting Authority is obliged to make all efforts and provide all necessary assistance to the Concessionaire Company to obtain the Necessary Approval from the Relevant Authorities.
- 39.2.** If a Relevant Authority does not issue a Necessary Approval within the time period specified in the Law, as long as:
- a) The Relevant Authority has not raised any objections or requested further action to be taken prior to granting the Necessary Approval; and
  - b) The Concessionaire Company has implemented all the requirements and formalities required by the Law in the request for the Necessary Approval;
- then this will constitute a Cause of Relief.

#### **Article 40. Quality management**

- 40.1.** The Concessionaire Company prepares and implements, in relation to each stage of the Project Implementation, quality control and assurance systems, in accordance with the ISO 9001 Standard (or any other equivalent, or more advanced procedure) and Good Industry Practices. The Concessionaire Company undertakes that each of the Subcontractors complies with the same Standards.
- 40.2.** Quality Systems apply to (inter alia) general management, control system, planning, design, construction, commissioning and maintenance of the Road.
- 40.3.** Prior to the commencement of any part of the Works or Maintenance Services, the

Quality Systems prepared by the Concessionaire Company are submitted to the Independent Engineer for comment and approval.

- 40.4.** In the absence of any comment or objection from the Independent Engineer within 20 (twenty) Business Days of submission, the Quality Systems are considered approved. In case of comments of the Independent Engineer, the Concessionaire Company takes them into account or submits to it once again the Quality Systems with explanations, regarding the reasons for not considering the comments.
- 40.5.** During the Duration of the Contract, the Concessionaire Company periodically reviews the certified systems. In the event of any change in Quality Systems, Articles 40.3 and 40.4 above shall apply in relation to the approval of the modified Quality Systems by the Independent Engineer.

**Article 41. Quality control**

The Contracting Authority or any institution or Person charged by the Contracting Authority, must from time to time, when it chooses, at the expense of the Contracting Authority or the relevant institution, check the quality control procedures of the Concessionaire Company and Subcontractors to ensure the control of performance of obligations under this Contract.

**Article 42. Coordination of design, construction and safety**

The Concessionaire Company acts in accordance with the Laws, which regulate the coordination of the Concessionaire Company with the Relevant Authorities for the design, construction and maintenance of the Road, object of the Contract, guaranteeing at all times the safety of the Road.

**Article 43. Completion of Works / Segments**

Completion of Works in relation to each relevant Segment means that the Segment has been completed and that submission has been provided in accordance with Article 44 (*Technical Submission*)

**Article 44. Commissioning/Technical Submission**

- 44.1.** No later than 15 (fifteen) Business Days before the date the Concessionaire Company expects to complete work on a Segment, Road or other Work, it shall provide the Independent Engineer with the qualifying documentation relating to the design drawings, the updated draft drawings with the changes made during the construction, bringing to attention the status of the works at that time, for inspection purposes. The Independent Engineer has 10 (ten) Business Days to confirm that the Works have been completed. If any objection is raised by the Independent Engineer, the Concessionaire Company and the Independent Engineer shall consult on the measures required to be taken to meet the requests of the Independent Engineer, in order to perform this Contract.
- 44.2.** Upon receipt of written confirmation from the Independent Engineer that the Works related to that Segment, Road or other Work have been completed, the Concessionaire Company notifies in writing of the date (which may not be less than 10 (ten) Business Days from the date of notification) and the manner of organizing the submission procedure, as follows; The Contracting Authority, the Independent Engineer,



the Construction Subcontractor as well as any Relevant Authority, who is invited or whose presence is required by Law. In the above written notice, the Concessionaire will also include confirmation from the Independent Engineer that the Works have been completed and any other documentation that may be necessary to carry out the technical submission procedure.

- 44.3. During the technical submission procedure, the Concessionaire Company will allow any inspection that may be required to be performed by the Contracting Authority and / or the Relevant Authority under the Law. The Contracting Authority has 30 (thirty) Business Days to decide whether the Concessionaire Company has met all Standards regarding the Works, or to notify the Concessionaire Company of any objections it may have by sending a detailed notice explaining the alleged discrepancies.
- 44.4. If any objection is raised by the Contracting Authority and / or the Relevant Authority, the Concessionaire Company and the Independent Engineer shall be consulted on the measures required to be taken to fulfill the requirements of the Contracting Authority, in order to perform this Contract.
- 44.5. After the implementation of the measures agreed with the Independent Engineer in paragraph 44.1 or 44.4 above, the Concessionaire Company may resume the technical submission procedure in accordance with Article 44.1, provided that if the technical procedure is resumed in accordance with this provision, the period of 15 (fifteen) days according to Article 44.1 and the period of 30 (thirty) days according to Article 44.3 above, to be considered as 10 (ten) Business Days. The technical submission procedure ends when the Contracting Authority and / or the Relevant Authority no longer identifies non-compliance of the Works with the Implementation Project.

#### **Article 45. Obtaining the Certificate of Completion**

- 45.1. Within 20 (twenty) Business Days from the completion of the technical submission procedures according to Article 44 (Technical Submission) above, the Contracting Authority will provide the Concessionaire Company with the Certificate of Completion for the Segment, Road and / or other Work. Delays of the Contracting Authority in providing the Concessionaire Company with the Certificate of Completion within the above deadline will be considered as a Cause of Relief.
- 45.2. Even if the Concessionaire Company has received a valid Certificate of Completion in connection with the relevant Segment, nothing in this Contract shall diminish or limit in any way the remaining obligations of the Concessionaire Company under this Contract.

#### **Article 46. Obtaining Certificates of Utilization**

- 46.1. The Contracting Authority will reasonably provide the necessary assistance to the Concessionaire Company to obtain a Certificate of Utilization (for a Segment, Road or any other Work) in a timely manner and in accordance with the Law, as long as the Concessionaire has fulfilled the criteria and its obligations to obtain a Certificate of Utilization in accordance with the procedures required by the provisions of Law no. 107/2014 "*On Territorial Planning and Development*", as amended and sub-legal acts with regard to its enforcement.
- 46.2. If the Relevant Authority does not issue the Certificate of Utilization within the

period provided by Law, even though the Independent Engineer and the Contracting Authority have not submitted any objection to the Works and, on the other hand, no other measures are required to be completed, provided that the Concessionaire has fulfilled its obligations under the relevant provisions of the Law when it has applied for the Certificate of Utilization, then this will be considered as a Cause of Relief, without excluding here the application of the operating conditions provided by this Contract or the Operating Agreement.

#### **Article 47. Liability for Defects**

- 47.1.** Without prejudice to any other rights of the Parties under this Contract, the Contracting Authority has the right to request the Concessionaire Company to repair any Defects in Works at the expense of the Concessionaire Company, in accordance with this Contract, during the relevant Defects Liability Period.
- 47.2.** The Concessionaire Company is responsible and performs as soon as practically possible any reconstruction, repair, rehabilitation or other Works required as a result of a Defect, except as otherwise provided in this Contract.
- 47.3.** Upon completion of a Work, in accordance with the provisions made in Article 40 (*Quality Management*) above, the Independent Engineer certifies that these Works have been carried out in accordance with the Standards according to the Project Documents. To the extent that such Works have not been completed in accordance with the Standards, the Concessionaire Company is required to carry out other Works until they are completed.
- 47.4.** For the avoidance of doubt, throughout the Concession Period and its stages, the Concessionaire Parties shall not be liable for any default arising out of any element of the Cause of Relief and / or Force Majeure Event, and are not the result of the culpable non-fulfillment of the obligations of the Concessionaire Company in relation to the Standards.

#### **Article 48. Procedure for Defects Repair**

- 48.1.** If during the Operating Period of Segments constructed by the Concessionaire Company a Defect is identified, the Concessionaire Company will rectify the Defect / Defects. The project / actions for elimination of the Defect occurred will be approved in advance by the Independent Engineer. The cost of repairing the Defects will be borne by the Concessionaire Company.
- 48.2.** Concessionaire Company at any time:
  - a) Performs Works and Services so as not to aggravate a Defect and;
  - b) As soon as he becomes aware of a Defect, he makes every reasonable effort to mitigate the consequence of that Defect; and
  - c) Takes all steps to minimize the consequences of any known Defect.
- 48.3.** The Concessionaire Company notifies the Contracting Authority and the Independent Engineer within 5 (five) Business Days of becoming aware of or finding a Defect, and thereafter provides the Contracting Authority and the Independent Engineer with any further information regarding the Defect. The Independent Engineer, based on

this information, gives his opinion within 5 (five) business day, regarding the application of measures for its repair.

- 48.4.** No later than 15 (fifteen) Working Days after receiving an opinion from the Independent Engineer according to Article 48.3 above, the Concessionaire Company submits to the Contracting Authority and the Independent Engineer a proposal for repair works to correct the Defect. The Independent Engineer has 5 (five) Working Days to comment on the Concessionaire Company's proposal.
- 48.5.** No later than 10 (ten) Business Days after receiving the proposal of the Concessionaire Company pursuant to Article 48.3 above, the Contracting Authority either approves it in writing or suggests relevant changes to the Proposal of the Concessionaire Company. If the Contracting Authority estimates that it needs more time to review the proposal, the additional deadline will be notified in writing to the Concessionaire Company, but this additional term cannot be more than 10 (ten) more Business Days. If the Contracting Authority does not respond regarding the Proposal of the Concessionary Company, then this proposal will be considered approved.
- 48.6.** If the Contracting Authority suggests changes in the Concessionaire Company Proposal, the Concessionaire Company within 5 (five) Business Days from receiving the suggested changes passes the proposal to the Independent Engineer, who immediately makes a final decision on the proposal.
- 48.7.** The decision of the Independent Engineer according to Article 48.6 above, is binding on the Parties, unless one of the Parties objects to it, in accordance with the provisions made in Article 132 (*Escalation and Dispute Resolution*) of the Contract, within 15 (fifteen) Business Days from the decision of the Independent Engineer.

## **CHAPTER 6 CHANGES**

### **Article 49. Changes Requested by the Contracting Authority**

- 49.1.** The Contracting Authority may request changes to the Standards, Project Implementation, Works or Services (including a change in the scope of Services), ("**Changes Requested by the Contracting Authority**") by sending notice to the Concessionaire Company ("**Notice of Changes by the Contracting Authority**"). In the Notice of Change by the Contracting Authority, the Contracting Authority must provide at least the following details:
- a) sufficient details of the Change Requested by the Contracting Authority, including the rationale and arguments why the change is required, as well as the impact it is expected to have on the Rights of the Concessionaire Company;
  - b) data on the costs of the Change Requested by the Contracting Authority in order for the Concessionaire Company to be able to carry out an assessment of the change;
  - c) the time frame within which it requests to be performed the Change Requested by the Contracting Authority;
  - d) the opinion of the Independent Engineer regarding the reasonableness of the Change Requested by the Contracting Authority; and

- e) facilitating measures that the Contracting Authority will take to mitigate the Impact of the Change Requested by the Contracting Authority on the Concessionaire Company.
- 49.2.** Any Changes Requested by the Contracting Authority must be reconciled and agreed in advance with the Concessionaire Company. Costs for Changes Requested by the Contracting Authority are borne by the latter. The parties agree that the Concessionaire Company has no obligation to effect the change unless it agrees to it.
- 49.3.** The Concessionaire Company shall respond to the Contracting Authority as soon as possible, but in any case, not later than the deadline set out in the Notice of Change of Contracting Authority, which may not be less than 30 (thirty) Business Day.
- 49.4** The Contracting Authority has no right to:
- a) request that the construction Works of the road subject to the Concession of this Contract, or the Services be provided in a manner contrary to the Law or Good Industry Practices of the transport, construction as defined in the Implementation Project;
  - b) changes that threaten, or would seriously threaten the health or safety of Persons;
  - c) changes that would profoundly change the nature of the Project Implementation or Services, including the nature of the risks and Standards;
  - d) changes that are not part of the rights of the Contracting Authority;
  - e) changes that would require Additional Land or Extra Land (and such Additional Land or Extra Land is not granted or financially borne by the Contracting Authority);
  - f) changes that would cause the revocation, suspension or modification of any existing Necessary Approval, or would require a necessary new consent / permit and when there is no reasonable likelihood that the Concessionaire Company could obtain the Necessary Approval, within the time limit proposed for the implementation of the change proposed by the Contracting Authority; and
  - g) changes that would constitute costs and expenses that separately or jointly throughout the Concession Period exceed the total value of 1 (one) million Euros for the Concessionaire, thus putting the Concessionaire Company at risk and difficulty, unless the Contracting Authority assumes the preliminary coverage of costs and expenses, and except for the alternative way which will be agreed between the Contracting Authority and the Relevant Authority responsible for the routes.

## **Article 50. Changes Requested by the Concessionaire Company**

- 50.1.** The Concessionaire may propose changes to the Works or Services by submitting a written notice to the Contracting Authority (“**Notice of Changes by the Concessionaire Company**”). In the Notice of Change by the Concessionaire Company, the Concessionaire Company announces:
- a) the nature of the change proposed by the Concessionaire Company in sufficient detail to enable the Contracting Authority to evaluate the proposal in a qualified manner;

- b) if in connection with the change requested by the Concessionaire it is necessary to request the settlement of its obligations under this Contract, and if such a change by the Concessionaire is likely to cause delays in the scheduled completion date of the relevant Segment / s ;
  - c) An explanation of the reasons why the change is requested by the Concessionaire Company;
  - d) an explanation of the expected impact of the change required by the Concessionaire Company including the additional costs; and
  - e) the opinion of the Independent Engineer regarding the reasonableness of the Concessionaire Company's proposal.
- 50.2.** The Contracting Authority considers in good faith the notice of the Concessionaire Company for change, taking into account all relevant circumstances, including, but not limited to:
- a) the possible impact of the Change Requested by the Concessionaire Company on the realization of Works and Services for the Road, as well as the risk of impairing the work progress;
  - b) the potential impact of the Change Requested by the Concessionaire Company on the relationship between the Contracting Authority and third parties;
  - c) the potential impact of the Change Requested by the Concessionaire Company on the condition of the Road after the Works Completion Date; and
  - d) the potential impact of the Change Requested by the Concessionaire Company on the risks and costs borne by the Contracting Authority.
- 50.3.** The parties discuss within 20 (twenty) Business Days the Notice of Change of Concessionaire Company and the Contracting Authority may propose other changes and accept or reject the proposal of Change by the Concessionaire Company, arguing the reasons for the rejection.
- 50.4.** The Contracting Authority will respond to the Concessionaire Company as soon as possible but in any case, not later than the deadline presented in the Notice Of change By the Concessionaire Company, which may not be less than 30 (thirty) Business Days.
- 50.5.** If the Contracting Authority accepts the Notice of Change by the Concessionaire Company, the Parties agree on the necessary changes to the conditions of this Contract and the Project Documentation.
- 50.6.** Except when the Changes Requested by the Concessionaire Company come as a direct or indirect result of a Cause of Relief to which the provisions of the Article 80 (*Cause of Relief*), the costs of Changes Requested by the Concessionaire Company will be borne by it.

## **CHAPTER 7 OPERATING SERVICES**

### **Article 51. Operating Service**

Operating Service includes the operation and maintenance of the Operating Infrastructure including cabins, the automated gate system for allowing entry and exit on the Road, traffic sensors and other metering elements, the electronic Tariff collection and traffic monitoring system, the servers necessary for the maintenance and processing of traffic data and related collections, as well as any other necessary element ("**Operating Infrastructure**") for the implementation of the service of enabling access to the Road of the Users, collection of the Tariff, traffic control and providing assistance to Users, preventing violations, including reacting in case of urgent interventions ("**Operating Service**").

## **Article 52. The Right to Provide Operating Service**

**52.1** Unless otherwise agreed by the Contracting Authority, the Operation Service by the Concessionaire begins on the date of furnishing with the Certificate of Completion, as long as it enables the commencement of the Operation Service (*Commencement date of Operating by the Concessionaire Company*).

**52.2** The Operation Period begins on the Operation Commencement Date and ends with the end of the Concessionary Period (hereinafter "Operation Period").

**52.3** During the provision of the Operation Service by the Concessionary Company, the latter, as far as these are applicable, will apply the conditions and principles for the provision of the Joint Coordination service, provided for in Appendix 2 (*Main Provisions of the Mutual Monitoring and Coordination Agreement*).

## **Article 53. Construction of Tariff Areas and Operating Center and Establishment, Maintenance of the Monitoring Infrastructure, Coordination of Operating Service**

**53.1** The construction of Tariff Areas and Operating Center for the provision of Operating Service will be carried out by the Concessionaire Company within the Object of this Contract in accordance with the Project Implementation.

**53.2** The establishment of the Operating Infrastructure and their maintenance is performed by the Person Responsible for the Operation.

## **Article 54. Monitoring, Coordination of Operating Service by the National Road Operating Entity**

**54.1** The parties agree that the National Road Operation Entity (EKORR), will exercise the monitoring, coordination of the operation service as provided in this Contract, after signing the Monitoring Agreement, Coordination of the Operation Service (as defined below).

**54.2** Not later than 6 (six) Months from the Effective Date of this Contract, the Contracting Authority will notify the Concessionaire in writing of the start of the negotiation of the Monitoring Agreement, Coordination of the Operation Service with the designated National Road Operation Entity from the Authority, and will forward the draft contract proposal of the Monitoring Agreement, Operation Service Coordination ("Proposal") drawn up by EKORR. The proposal will be drafted with reference to the basic conditions, rights and obligations that are described in Appendix 2 (*Main Provisions of the Monitoring Agreement, Coordination of the Operation Service*).

**54.3** The Agreement of Monitoring, Coordination of the Operation Service signed between the National Road Operation Entity designated by the Authority and the Concessionary Company and approved by the Contracting Authority shall be considered as signed between the Contracting Authority and the Concessionary Company. The Contracting Authority shall be jointly and severally liable and any violation by the National Road Operating Entity and the Damages arising to the Concessionary Company in relation to them shall be considered Cause of Relief and/or Non-Performance of the Contracting Authority under this Contract and the Monitoring, Coordination Agreement of the Operation Service. Also, the violation by the Concessionaire Company of the Monitoring Agreement, Coordination of the Operation Service, will be considered Non-Performance by the Concessionaire Company under this Contract.

#### **Article 55. Exercise of Operating Service by the Concessionaire Company**

The Operation Service of the Milot - Balldre Road shall be performed by the Concessionaire Company from the start of the operation service until the End Date of the Contract

#### **Article 56. Operating Coordination Procedures**

**56.1** Prior to the Operating Commencement Date, in cooperation also with the Independent Engineer, the Parties shall have agreed on coordination procedures regarding the operation, monitoring, coordination of the Operating Service between the concessionaire company/companies, National Road Operation Entity and the Relevant Authorities (including Police, Fire and Ambulance Services) ("**Operating Coordination Procedures**").

**56.2** Operating Coordination Procedures among others:

- a) provide for periodic meetings between the Concessionaire Company/companies for the Operation Service, the National Road Operation Entity and the Relevant Authorities to discuss issues affecting the scope of the Operation Coordination Procedures;
- b) determine, as appropriate, agreed traffic management procedures (including speed limits, handling of any emergencies, including access procedure and routes for emergency services (police, fire and ambulance services, water and electricity supply companies and any other relevant telecommunications companies);
- c) provide procedures regarding the maintenance of the safe operation of the Road and the safety of Users, employees of the Person Responsible for Operating Service and authorized visitors to the Road;
- d) include the communication procedure between the Parties and appoint a representative on behalf of the Person Responsible for the Operating Service to coordinate the work with the Relevant Authorities; and
- e) define the agreed procedure for changing Operating Coordination Procedures, from time to time.

#### **Article 57. Road Operating Plan**

**57.1** Starting at any time after the Works Commencement Date, in addition to the Operating Coordination Procedures, but not later than 20 (twenty) Business Days from the Operating Commencement Date, the Person Responsible for Operating Service will

prepare and submit to the Contracting Authority the entire program related to the Operation, after receiving the contribution and suggestions of the Independent Engineer in its drafting (hereinafter “**Road Operating Plan**”).

**57.2** Within 30 (thirty) Business Days from the submission to the Contracting Authority of the Road Operating Plan by the Person Responsible for the Operating Service, the Contracting Authority through the Relevant Authority responsible for the Roads, approves the Road Operating Plan or submits its remarks or recommendations. In case there are remarks and / or recommendations from the Contracting Authority, the latter together with the submission of remarks and / or recommendations assigns to the Person Responsible for the Operating Service another date for the meeting between the Parties, to discuss the Road Operating Plan and the remarks and / or recommendations of the Contracting Authority.

**57.3** The parties undertake that the Concessionaire Company will evaluate carefully and in good faith any submission made by the Contracting Authority regarding the Road Operation Plan. Within 5 (five) Working Days after the meeting and in any case within 15 (fifteen) Working Days from the date of receiving remarks or recommendations from the Contracting Authority, the Concessionaire Company sends the final version of the Road Operation Plan to the Contracting Authority and in case of not taking into account the remarks and recommendations of the Contracting Authority, sends an explanatory report on the reasons for not taking into account. The Contracting Authority has 15 (fifteen) Working Days to decide whether the Concessionary Company has complied with all remarks and recommendations regarding the Road Operation Plan or to notify the Concessionary Company of any objection it may have by sending a notice of detail explaining his objection. If the Contracting Authority does not respond regarding the final version of the Road Operation Plan, then this version will be considered approved.

**57.4** If any objection is raised by the Contracting Authority, the Person Responsible for the Operating Service within 10 (ten) Business Days from receiving the objections of the Contracting Authority, passes the objections to the Independent Engineer and sends an explanatory report on the reasons for not considering the objections. The decision of the Independent Engineer is binding on the Parties, unless one of the Parties objects to it, in accordance with the provisions made in Article 132 (*Escalation and Dispute Resolution*) of the Contract, within 10 (ten) Business Days from the decision of Independent Engineer.

#### **Article 58. Compliance with Procedures and Operating Plan**

**58.1** The Concessionaire Company or the Operating Entity, as the case may be, will provide the Operating Services throughout the Operating Period, in accordance with the Operating Coordination Procedures, as well as the Road Operation Plan.

**58.2** In providing Operating Services the Concessionaire Company or Operating Entity, as the case may be, at all times will make all reasonable efforts necessary to ensure that they do not operate in any way that adversely affects the operation of the Road and its traffic.

#### **Article 59. Responsibility over Operating Infrastructure**

Responsibility for the maintenance of the Operating Infrastructure, including any other elements necessary for the realization of the Operating Service shall be of the Concessionaire Company.



## CHAPTER 8 MAINTENANCE SERVICES

### **Article 60. Responsibility for Maintenance**

From the date of Project Territory Delivery until the Contract Closure Date, the Concessionaire Company shall be responsible for the preservation, maintenance and repair of damage to the Project Territory and / or the Road in accordance with this Contract, except as provided differently in the Operating Agreement and or any other act approved by the Parties.

### **Article 61. Maintenance, Plan preparation, Maintenance Period**

**61.1** Starting at any time after the Works Commencement Date, but not later than 30 (thirty) Business Days from the beginning of the Operating Period, the Concessionaire Company in accordance with the requirements of the Maintenance Manual, prepares and submits to the Contracting Authority the entire program in relation to Maintenance which must also be approved by the Independent Engineer (hereinafter “**Road Maintenance Plan**”).

**61.2** Within 30 (thirty) Business Days after receiving the Road Maintenance Plan from the Concessionaire Company, the Contracting Authority approves the Road Maintenance Plan or submits its remarks or recommendations, in accordance with the Maintenance Manual. In case there are remarks and / or recommendations from the Contracting Authority, the latter together with the submission of remarks and / or recommendations assigns to the Concessionaire Company another date for the meeting between the Parties to discuss the Road Maintenance Plan and remarks and / or recommendations of the Contracting Authority. The Concessionaire Company undertakes to carefully and in good faith evaluate any submission made by the Contracting Authority regarding the Road Maintenance Plan. Within 5 (five) Business Days after the meeting and in any case within 10 (ten) Business Days from the date of receipt of remarks or recommendations by the Contracting Authority, the Concessionaire Company sends to the Contracting Authority; the final version of the Road Maintenance Plan and in case of non-consideration of the remarks and recommendations of the Contracting Authority sends an explanatory report on the reasons for non-consideration. The Contracting Authority has 20 (twenty) Business Days to decide whether the Concessionaire Company has complied with all the remarks and recommendations, regarding the Road Maintenance Plan or to notify the Concessionaire Company of any objections it may have by sending a detailed notice explaining his objection. If any objection is raised by the Contracting Authority, the Concessionaire Company within 10 (ten) Business Days from receiving the objections of the Contracting Authority, passes the objections to the Independent Engineer and sends an explanatory report on the reasons for not considering the objections which immediately gives a final and binding decision for the Parties, unless one of the Parties objects to it, in accordance with the provisions made in Article 132 (*Escalation and Dispute Resolution*) of the Contract, within 10 (ten) Business Days from the decision of the Independent Engineer.

**61.3** The Concessionaire Company will provide Maintenance Services throughout the Operating Period, in accordance with the Maintenance Manual as well as the Road Maintenance Plan, as well as the overview of Maintenance Services activities reflected in

*Appendix 6 (Overview of Maintenance Service Activities).*

**61.4** In providing Maintenance Services the Concessionaire Company at all times makes all reasonable efforts necessary to ensure that it does not act in any way that adversely affects the operation of the Road and its traffic.

**Article 62. Maintenance coordination procedures**

By the beginning of the Operating Period, the Concessionaire Company, with the assistance and care of the Contracting Authority, must have completed discussions with all Relevant Authorities responsible for the Road, or affected by the Maintenance Services, and must have prepared and agreed, if necessary, for coordination procedures regarding Maintenance Services between the Relevant Authority (including police, fire and ambulance services, public infrastructure services) and the Concessionaire Company.

**Article 63. Amendments in the Maintenance Manual and / or Road Maintenance Plan**

63.1 The Concessionaire Company may propose to the Contracting Authority the amendment of the Maintenance Manual and / or the Road Maintenance Plan. Within 20 (twenty) Business Days after receiving the proposals for Change from the Concessionaire Company, the Contracting Authority, itself or through the Relevant Authority responsible for the roads, approves the proposals or submits in writing its remarks or recommendations. In case there are remarks and / or recommendations from the Contracting Authority, the latter together with the submission of remarks and recommendations assigns to the Concessionaire Company another date for the meeting between the Parties to discuss proposals for amending the Maintenance Manual and / or Road Maintenance Plan as well as remarks and recommendations of the Contracting Authority. The Concessionaire Company must carefully and in good faith evaluate any submissions made by the Contracting Authority through the Authority responsible for the roads, regarding the Maintenance Manual and / or the Road Maintenance Plan. Within 5 (five) Business Days after the meeting and in any case within 10 (ten) Business Days from the date of receipt of remarks or recommendations by the Contracting Authority, the Concessionaire Company sends for approval to the Contracting Authority, the revised version of the proposals to amend the Manual of Maintenance and / or Road Maintenance Plan, according to the remarks and recommendations of the Contracting Authority. The Authority must respond to the new proposal within a period of 20 (twenty) Business Days from the date of submission of the amended proposal. In case the Contracting Authority does not respond or does not approve the proposal of the Concessionaire, then the current Maintenance Manual and / or the current Road Maintenance Plan will continue to be in force.

**63.2** In case the Parties do not agree on the relevant changes to the Maintenance Manual and / or the Road Maintenance Plan, the Independent Engineer decides on the relevant changes that will be made to them. The decision of the Independent Engineer is binding on the Parties unless one of the parties objects to it in accordance with the provisions made in Article 132 (*Escalation and Dispute Resolution*) of this Contract.

**Article 64. Maintenance Center**

**64.1** The Concessionaire Company develops, operates and maintains one or more

maintenance centers as needed and in accordance with the Project Implementation, Maintenance Manual as well as the Road Maintenance Plan, as well as the Road Operating Plan (hereinafter “**Maintenance Center**”).

- 64.2** If the Concessionaire Company requests Additional Land where to build the Maintenance Center, the Contracting Authority agrees to such a request and provides the Additional Land for the purposes of the Center or Maintenance Centers in a timely manner and in accordance with the Law on Expropriations, taking into account all circumstances.
- 64.3** If the Contracting Authority is unable to provide the Additional Land requested by the Concessionaire Company, in consultation with it, the Contracting Authority shall select and provide a comparable alternative Additional Land for the purposes of the Maintenance Center.
- 64.4** If the Contracting Authority and the Concessionaire Company are unable to agree on the comparable alternative Additional Land, then the matter is decided by the Independent Engineer and the decision of the Independent Engineer is binding on the Parties, unless one of the parties objects to it in accordance with the provisions made in Article 135 (*Escalation and Dispute Resolution*) of this Contract.
- 64.5** The Maintenance Center or Centers are part of the Works and Services and in relation to the Maintenance Center or Centers, the Concessionaire Company meets the requests of the Relevant Authorities and coordinates with the Relevant Authorities according to the coordination procedures of Article 62 (*Maintenance Coordination Procedures*) of this Contract.

#### **Article 65. Obligations of the Concessionaire Company for the Maintenance**

- 65.1** In accordance with the requirements for Services determined by the Contracting Authority in accordance with this Contract as well as the proposals of the Concessionaire Company for maintenance according to the winning bid proposal, as well as Good Industry Practice, the Concessionaire Company, in cooperation with the Contracting Authority and Relevant Authorities:
- a) will take all measures to enable the smooth and uninterrupted movement of traffic on the Road and to keep to a minimum its delays;
  - b) will undertake (and undertake that each Subcontractor as well as its employees will undertake) all necessary actions to maintain the Road in such a way as to ensure the uninterrupted and safe operation of the Road on a 24-hour basis by vehicles and any potential User (except in cases of Force Majeure Events, accidents or other events that make it inoperable);
  - c) will respect the Maintenance Manual; and
  - d) will act as soon as possible against emergencies or other incidents, as provided in the Maintenance Manual /s or Road Maintenance Plan.
- 65.2** When a Work for maintenance, repair or other Works requires the interruption or suspension of use of all sections of the Road, or the closure of the Road for a period of time, the Concessionaire Company shall give (i) to the Contracting Authority, (ii) The relevant Authority involved, and (iii) any interested parties and all affected Users, by available means, in accordance with Good Industry Practice, prior notice of such case,

except in cases of emergency or of a minor disorder on the Road. In the event of an emergency, or a minor disorder on the Road, no prior notice is required, however, as soon as possible, but in any case within a reasonable time, the Concessionaire Company gives to the Contracting Authority and each Relevant Authority, explanations of the event in question, if requested.

- 65.3** The Concessionaire Company makes at any time, any reasonable effort to reduce or avoid disturbances caused to Road traffic.
- 65.4** The Concessionaire Company will carry out the Capital Repairs according to the rehabilitation cycles of the Road layers, defined in the Tender Documentation, in accordance with the technical Rules for the design of roads provided by the Law. The Concessionaire Company submits to the Contracting Authority and the Independent Engineer a Capital Repair Program, not later than 30 (thirty) Working Days before the first day to which the Capital Repair Program is related and a proposal related to the following year, in accordance with the Maintenance Manual as well as the Road Maintenance Plan. The Contracting Authority may comment on the Capital Repairs Program within 30 (thirty) Business Days after submission of the proposed Capital Repairs Program. The Concessionaire Company takes such comments into account, except for those comments that would result in unreasonable delays, violations of this Contract or the Law, or high costs.
- 65.5** To avoid any doubt, the repair of road damage as a result of Force Majeure Events and related costs shall be dealt with in accordance with the provisions of the Article 80 (*Cause of Relief*). Prior to the commencement of works for the repair of these damages, the Concessionaire Company submits to the Independent Engineer and the Contracting Authority the intervention plan for these repairs as well as their cost. Only after the Parties agree on the plan and cost of the interventions does the Concessionaire start work on repairing the damage to the Road.

## **CHAPTER 9 URGENT INTERVENTIONS**

### **Article 66. Urgent Interventions of the Concessionaire Company**

- 66.1** “Urgent Intervention(s)” include extraordinary Works for unblocking, cleaning, maintenance or repair of the Road in case of Force Majeure or other events, as a result of which the Road has suffered damages or blockages that impede or do not allow the use of the Road by its Users.
- 66.2** Concessionaire Company in cooperation with (i) the Contracting Authority (ii) the Relevant Authority and / or (iii) the National Road Operating Entity (in case such cooperation will be necessary):
- a) in case of Emergency Interventions acts in accordance with (i) Road Maintenance Plan, (ii) Maintenance Manual (s) and (iii) Standards set out in this Contract; and
  - b) if there has been an Emergency Intervention, it submits to the Contracting Authority an annual report on the cases of Emergency Interventions in the Concession Period, detailing the activities of the Emergency Interventions operations undertaken by the Concessionaire in the specific case of Emergency Interventions.

### **Article 67. Costs related to Urgent Interventions**

**67.1** If, as a result of the Emergency Intervention, the Concessionaire Company incurs costs that would not have arisen in the absence of the Emergency Intervention, the Parties agree that the additional costs not covered by the Insurance to the Concessionaire will be borne by the Parties equally (50% to 50%).

**67.2** If the Emergency Interventions are caused by a faulty act or omission of the Concessionaire Company or a Concessionaire Party, the additional costs incurred by the Concessionaire Company will all be borne by it.

**67.3** Unless the cases provided in Article 68 (*Additional and Alternative Services*), if the Emergency Interventions are caused by an act or omission through the fault of the Contracting Authority, the additional costs incurred by the Concessionaire Company shall be borne by the Contracting Authority.

#### **Article 68. Additional and alternative services**

68.1 If an Emergency Intervention in the Operation Period occurs, which cannot be resolved through the usual provision of Services (such as the interruption of the Operation Service due to requests from the Relevant Authorities for the development of sports or official activities or other cases), the Concessionaire Company, based on the possible instructions of the Contracting Authority, will make all reasonable efforts to ensure the provision of such additional or substitute services in order to

a) to resolve the case of Emergency Intervention; and

b) restore normal delivery of the Services as soon as possible,

provided that the provision of such services or alternative services does not conflict with the obligations of the Concessionaire Company under this Contract and that the Concessionaire Company is able to provide additional or alternative services.

#### **Article 69. Costs associated with additional services**

If the Concessionaire Company provides additional or alternative services in accordance with the provisions of the Article 68 (*Additional and alternative services*) above, the Contracting Authority shall pay to the Concessionaire Company its additional costs according to the relevant costs / invoices and the Lost Profit, due to the partial or complete interruption of the Operation Service, caused to the Concessionaire as a result of the provision of such additional or substitute services (unless the case for Emergency Intervention is caused by an act or omission of the Concessionaire Company or of a Party of the Concessionaire).

### **CHAPTER 10 TARIFF**

#### **Article 70. The right to Tariff**

**70.1** The parties agree that during the Duration of the Contract, the Concessionaire Company has the exclusive right to benefit from the revenues of the Tariff.

**70.2** The Concessionaire Company has the right to apply the Tariff immediately after the Operating Commencement Date.

#### **Article 71. Collection of Tariff Revenue**

**71.2** The Tariff may be collected in: (i) ALL (ii) Euro or (iii) in other currencies that may

be agreed in writing by the Parties.

71.2 Tariff collection is performed based on Tariff Revenue in accordance with this Chapter, and Appendix 8 (Bid Documentation), immediately after the Operating Commencement Date, which will also represent the date of commencement of use of the Road with Tariff.

## **Article 72. Tariff Rate**

**72.1** From the Operating Commencement Date, the Concessionaire Company will apply the Tariff \_\_\_\_\_ EUR, VAT excluded for the vehicles per kilometer, adjusted as appropriate depending on the vehicle classification in accordance with the provisions of Article 73 (*Vehicle Classification*) below. The ALL Tariff will be the amount calculated at the official exchange rate from Euro to ALL of the Bank of Albania on the Operating Commencement Date.

**72.2** In accordance with the Bid Documentation, starting from the beginning of the second full calendar year from the Operating Commencement Date, the Tariff will be adjusted according to the following formula:

$$T_i = T_0 \cdot I$$

Where:

$T_i$  - Tariff in the year  $i$ .

$T_0$  - The previous Tariff.

$I$  - Growth index which is calculated according to the following formula:

$$I = (0.25 \frac{ECPI_i}{ECPI_0}) + (0.25 \frac{ECCI_i}{ECCI_0}) + (0.5 \frac{LCPI_i}{LCPI_0})$$

Where:

$I$  - index in year  $i$

$ECPI_0$  - Price index in Euro in the month in which the date of Financial Closure falls.

$ECPI_i$  - Euro price index in the last month for which data are available at the calculation date.

$ECCI_0$  - EU index of producer price in the year in which the date of the Financial Closure falls.

$ECCI_i$  - EU price index for the last year for which data are available at the calculation date.

$LCPI_0$  - Consumer price index in ALL in the month in which the Financial Closure falls.

$LCPI_i$  - Consumer price index in ALL in the last month for which data are available at the calculation date.

**72.3** In calculating the Tariff adjusted according to the above formula, the Concessionaire

Company will round the value of the Tariff to a figure without decimal places (in Euro - 0.1 Euro and in ten ALL- 10 ALL).

**72.4** Calculations of the adjustments of the applied Tariff Rate will be made in each Year of the Contract. Notwithstanding this, these calculations will be reflected in the value of the Tariff cumulatively once every 4 (four) years. The relevant calculations shall be sent to the Contracting Authority and the ministry responsible for finance within the first month after the end of each Financial Year, who shall have a period of 45 (forty-five) Working Days to verify the accuracy of the calculations made.

a) In the event that the Contracting Authority and/or the ministry responsible for finance express any reservations regarding the calculations made, within the aforementioned period, the Parties and the authorized representative of the ministry responsible for finance shall meet to discuss with the aim of reaching a mutual agreement.

b) If, despite the good faith efforts of the Parties, they have not reached an agreement on the calculation made, within a period of 6 months from the date of sending the calculation to the Contracting Authority, then the Concessionaire Company has the right to apply the Indexed Tariff according to the calculation it has made immediately upon the expiry of the aforementioned 6-month period and the Parties have the right to apply to the Court in accordance with **Article 132 of this Contract**.

c) For the avoidance of doubt, the Contracting Authority and the Ministry responsible for Finance, at any time, including after the application by the Concessionaire Company of the indexed tariff pursuant to letter (b) of Article 72.4, have the right to verify the accuracy of the calculation of the indexed tariff and, if they prove to be incorrect, to request the Concessionaire Company to immediately correct them and apply the correct tariffs.

d) If, notwithstanding the Concessionaire's agreement or right to apply the Indexed Tariff under this Article, the Contracting Authority decides for public reasons to require the Concessionaire not to apply the Indexed Tariff, then the Concessionaire, without prejudice to any of its rights under this Contract:

(i) shall not apply the Indexed Tariff; and

(ii) 1 month before the end of the calendar year in which the Indexed Tariff should have been applied, shall send the Contracting Authority the traffic incurred up to that date and a forecast for traffic up to the end of that calendar year, together with an estimate of the compensation to be received from the Contracting Authority as a result of the non-application of the Tariff indexation (hereinafter "Compensation for Tariff Indexation"); and

(iii) the Concessionaire Company shall be entitled to receive the Tariff Indexation Compensation within 6 months from the end of the calendar year in which the indexed Tariff should have been applied; and

(iv) the Contracting Authority and the ministry responsible for finance shall take the necessary measures to ensure the Tariff Indexation Compensation under paragraph (iii) above.

**72.5** In accordance with the offer of the Bid Documentation, starting from the beginning of the second full calendar year from the Operating Commencement Date, the Tariff calculated in ALL will be indexed according to the index of exchange rate change from euro to ALL of the previous year (calculated on the basis of data of the Bank of Albania).

**72.6** Notwithstanding the provisions of paragraph 72.5, in the event that the average exchange rate between the ALL and the Euro during the preceding 30 (thirty) days during a Contract Year changes to a factor exceeding 5% of the exchange rate existing at the time of last adjustment and this change is not returned within 5% of the original exchange rate within 30 (thirty) days thereof, the Concessionaire Company has the right to apply the Tariff increase based on the adjustments provided in paragraph 72.5, applying them for the period that has passed from the beginning of the Contract Year until the moment of calculation. These adjustments can be made a maximum of 3 (three) times per Contract Year.

**72.7** The parties agree that regardless of the result of the calculations performed under this Article 72 (*Tariff Rate*), the Tariff shall not be reduced beyond the level specified in paragraph 72.1 above.

**72.8** In addition to the above provisions, each Party has the right to propose to the other Party additional Tariff increases, but it may not be changed without the approval of both Parties.

**Article 73. Vehicle Classification**

**73.1** In the implementation of the Tariff, the taxation of Vehicles is calculated, depending on the class of the vehicle according to the table below:

<b>Vehicle class</b>	<b>Name</b>	<b>Class coefficient / Tariff</b>
1	Motorcycle/ tricycle	0.5
2	Light vehicles	1
3	Low 3-axle vehicles and high vehicles with 2 axles	1.5
4	Low 4-axle vehicles and high 3-axle vehicles	2
5	Buses with less than 4 axles	2-3
6	Low 5-axle vehicles and high vehicles with 4 axles	3
7	Low vehicles with 6 axles and high vehicles with 5 axles	3-4
8	High vehicles with 6 axles	4
9	All the vehicles with 7 or more axles	5

**73.2** In the event of an Amendment to the Law concerning the classification of vehicles, the provisions in the preceding paragraph shall be adapted as appropriate. The Concessionaire Company proposes to the Contracting Authority for approval (this approval will not be rejected without reason) the relevant adjustments in the Tariff coefficients to be adapted to



the new categorization, in such a way that the new level of Tariff Revenue is not different from the Tariff Revenue projected in the Financial Model. If the proposal is rejected, the Concessionaire Company will review the changes once again to reflect the remarks of the Contracting Authority. The changes made that have reflected the remarks of the Contracting Authority, will be considered final and will no longer need the approval of the Contracting Authority. In case the adjustment made based on the new categorization would be necessary to round the Tariff coefficients and its application would cause a decrease of the expected Tariff Revenue compared to the current level of Tariff Revenue for the previous Year, the rounding will be done approaching the highest figure.

#### **Article 74. Method of payment of the Tariff by Users, VAT**

- 74.1 Users will be able to pay the Fee in (i) cash in ALL or Euro, (ii) by debit or credit card, or (iii) in other forms of payment that may be used in the future. The option of which form of payment will be used is chosen by each individual User.
- 74.2 The Concessionaire Company, in the case when the operation is performed by it, must also accept electronic payments through an electronic Tariff Collection System (TCS) in at least one lane of the Road, which must operate on both sides of the Road. The TCS system used by the Concessionaire Company must comply with European Directive 2004/52 / EC and must minimize the risk of non-payment of the Tariff. In order to reflect the requirements of having a functioning TCS system, the Concessionaire Company is granted a period of 1 (one) year, from the Operating Commencement Date, before this provision becomes applicable.
- 74.3 Tariff payments will be subject to VAT, as provided by Law.

#### **Article 75. Registration of Tariff information**

- 75.1 The Concessionaire Company monitors and maintains complete and accurate data on all Tariff Revenue and traffic data and includes this information in the annual performance reports, in accordance with the provisions of Article 107 (*Annual Statements of Payments*) of this Contract.
- 75.2 The Contracting Authority from time to time (at its own expense) inspects, monitors or controls these Tariff Revenues and traffic data and performs controls of the Concessionaire Company and/or the National Road Operating Entity regarding the implementation of the Tariff.

#### **Article 76. Excluded Users**

- 76.1 The Contracting Authority and the Concessionaire Company agree that the List of Excluded Users reflected in Appendix 3 (*List of Excluded Users*), is the complete list of Users allowed to travel on the Road free of charge and who are not required to pay the Tariff, while all other Users must pay the Fee.
- 76.2 Neither Party may add or remove any person or group of persons from Appendix 3 (*List of Excluded Users*) without the prior written consent of the other Party.
- 76.3 If by written agreement between them the Parties agree to apply Reduced Tariffs for one / several categories of Users, the refund of the Tariff difference will be made to the Concessionaire Company by the Contracting Authority as per the provisions of the Law 108

*(Annual Payments).*

**Article 77. The right to generate Additional Revenue**

To the extent permitted by Law, the Concessionaire Company may use the Road to generate Additional Revenue, in addition to Tariff Revenue. If required by Law, proposals to generate Additional Revenue shall be subject to the approval of the Contracting Authority or Relevant Authority. Additional Revenue will be distributed equally between the Concessionaire and the Contracting Authority, after deducting Expenses related to the realization of Additional Revenue.

**Article 78. Tariff Evasion**

In case a User commits Tariff Evasion, the responsibility remains with the Concessionary Company that has allowed the road user to do Tariff Evasion, all after the written request by the Concessionary Company, the Contracting Authority provides all reasonable assistance to the Concessionary Company for the collection of the Fee by Users, including but not limited to providing a reasonable traffic police presence on the Road and responding efficiently to the Concessionaire Company requests regarding the implementation of the Fee.

**CHAPTER 11 SPECIAL EVENTS**

**Article 79. Force Majeure**

**79.1** “**Force Majeure Event**” is an event which is not within the control of the Parties and which could not have been foreseen by them and which results in the Injured Party claiming to be unable to fulfill the obligations set forth in this Contract, including, without limitation in:

- a) any event of nature including, but not limited to, fire, flood, or any other natural disaster, such as an earthquake, hurricane, tornado, meteor strike or other celestial body;
- b) occupation, war, rebellion, revolution, civil war, armed conflict, state of emergency established by law, terrorism or embargo;
- c) ionizing radiation or chemical or biological contamination;
- d) explosions caused by supersonic devices or other explosions;
- e) nuclear explosion or radioactive contamination;
- f) epidemics or pandemics;
- g) and other similar events which are not in the hands of either Party and which result in one of the Parties not being able to fulfill the obligations set forth in this Contract.

**79.2** Neither Party has the right to consider the other Party in default or breach of its obligations under this Contract, due to a Force Majeure Event and to the extent that a Force Majeure Event prevents it from performing its obligations.

**79.3** When a Force Majeure Event occurs, the Injured Party shall notify the other Party without delay in accordance with the respective deadlines set forth in this Contract. The notice shall include details of the impact of this event on the Injured Party's liabilities

and of any action taken to mitigate its consequences.

**79.4** Upon such notification, the Parties shall consult with each other without delay and in good faith shall make reasonable efforts to agree on appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the subsequent performance of the Contract.

**Article 80. Cause of Relief**

**80.1** “Cause of Relief” are the following events that occur to the Concessionaire Company:

- a) violation by the Contracting Authority and / or its authorized representative of any essential obligation provided by this Contract that makes the Concessionaire Company fail to fulfill the obligations provided by this Contract, for a period longer than 30 (thirty) Business Days;
- b) failure by the Contracting Authority to make the Delivery of the Project Territory or to make available the Project Territory to the Concessionaire Company;
- c) failure by the Contracting Authority to provide the Concessionaire Company with a Quiet Enjoyment and entry and exit to the Site after the Works Commencement Date;
- d) non-payment or delay of Payments by the Contracting Authority;
- e) any Amendment to the Law which makes impossible or significantly impedes the implementation of the Contract by the Concessionaire Company and / or harms its financial and economic interest under this Contract;
- f) any State Action Substantially Contrary to the Contract;
- g) the discovery on the Site of Archaeological or Cultural Heritage Objects, including cemeteries and memorials, or other items of archaeological, geological or historical significance, have been discovered in / or around the Project Territory;
- h) discovery of Unforeseen Public Infrastructure;
- i) detection of Hazardous Materials;
- j) Force Majeure Events;
- k) detection of a Carried Problem, which prevents the Concessionaire Company from fulfilling the obligations stipulated in this Contract;
- l) Failure to provide the Concessionaire Company not through the fault of the Concessionaire Company, with the Necessary Approvals and / or Necessary Approvals from the Contracting Authority, before the Works Commencement Date, when all measures have been taken by the Concessionaire Company and all legal criteria and contractual obligations for their taking have been met.
- m) Failure to provide, revoke, cancel, declare invalid and / or amend (without the request of the Concessionaire Company) the Necessary Approvals and / or Necessary Approvals by the Contracting Authority through no fault of the Concessionaire Company after the Works Commencement Date;
- n) The emergence of a dispute that is resolved in accordance with Article 132

*(Escalation and Dispute Resolution);*

- o) strikes, abandonment of work by employees, as long as these events take place throughout the relevant sector and not just the Concessionaire Company;
- p) civil riots, protests that result in the closure of the Road, the banning of Services, or the blocking of the Site or part of it;
- q) a Geotechnical Emergency Situation or accidental loss or damage to Works or Road, Road Segments or parts thereof;
- r) any other event or cause expressly provided for as a Cause of Relief in this Contract.

**80.2** In the event that, as a result of a Cause of Relief, the Concessionaire Company is late in performing the Works or Services under the Contract and / or is unable to fulfill its other obligations arising from this Contract, the Concessionaire Company/ Concessionaire may claim the benefits of the following applicable as appropriate, in the form of:

- a) an extension of the expected date of fulfillment of the respective obligation and all deadlines for the obligations that follow for the delay suffered by the Concessionaire Company; and / or
- b) changing its obligations including related penalties, if any, to the extent and in the portion that they are affected by the occurrence of the Cause of Relief; and / or
- c) non-applicability of the provisions for the termination of the Contract for Non-fulfillment of the Obligations of the Concessionaire / Concessionaire Company insofar as the Cause of Relief has caused the non-fulfillment or has contributed materially to it; and or
- d) extension of the Concession Period, according to the provisions of the Law No.125/2013 “On concessions and public private partnership”, as amended.

**80.3** Regardless of the above, in (i) cases of events provided for in subsections (a), (c), (d), (f), (m) of Article 80.1, (ii) cases mentioned in the Contract including articles 13.2, 67.3, which bring costs to the Concessionaire Company, and must be compensated, in addition to the benefits provided in paragraph 80.2, the Concessionaire or the Concessionaire Company may also request compensation for the caused Damages, excluding the costs deriving from the event of a Force Majeure.

**80.4** Regardless of the provisions of Article 80.3 above, in cases where the Concessionaire is in the conditions of a Force Majeure Event and the Parties do not decide to terminate the Contract in accordance with the provisions of Article 99 (*Termination of the Contract due to a Force Majeure Event*), the costs arising as a result of the Force Majeure Event not covered by the Insurance will be shared between both Parties equally (50% to 50%).

**80.5** Except where the delay in the implementation of the aforementioned notice deadlines is not caused by the Concessionaire Company or is caused by reasons not dependent on the Concessionaire Company, the Concessionaire Company receives benefits under paragraphs 80.1, 80.2 and 80.3 above, in circumstances where it has notified the Contracting Authority and the Independent Engineer for its request to receive any of these benefits without undue delay, but in any case, no later than the maximum:

- a) 30 (thirty) Business Days after the Concessionaire Company has become aware of the occurrence of the Cause of Relief; and
- b) no later than 30 (thirty) Business Days after the submission of the notice mentioned in the above paragraph:
  - 1) has provided the Contracting Authority and the Independent Engineer with a full and detailed explanation of the Cause of Relief provided that, if complete information is not available within 30 (thirty) Business Days from the issuance of the notice under Article 80.5 (a) above, the Concessionaire Company must send a notice submitting all available information and every 7 (seven) Business Days upon submission of this information provide further information to the Contracting Authority and the Independent Engineer;
  - 2) in case of a delay, has notified the Contracting Authority and the Independent Engineer of the approximate duration of this delay;
  - 3) has notified the Contracting Authority and the Independent Engineer of the expected loss of revenue, or of an increase in costs resulting from a Cause of Relief; and
  - 4) has proven to the Independent Engineer that:
    - (i) The Cause of Relief has resulted or will result in the postponement of Works or Services, non-fulfillment of other obligations of the Concessionaire, increase of costs, or non-generation of revenues by the Concessionaire; and
    - (ii) The Concessionaire Company has made every reasonable effort in accordance with Good Industry Practice to prevent or mitigate the consequences of a Cause of Relief, if any.

**80.6** If the Concessionaire has fulfilled the obligations provided in paragraph 81.3 above and the Independent Engineer makes a notification stating that a Cause of Relief has occurred and that the Concessionaire should be removed from liability respectively for non-fulfillment of its obligation, in accordance with paragraph 80.1 above, then:

- a) where appropriate, the scheduled preliminary end date of the respective Segment or the scheduled end date of the respective Segment or the scheduled date of completion of the relevant Service shall be postponed for a period of time determined by the Independent Engineer, but not shorter than the period of delay caused by the Cause of Relief; and
- b) as the case may be, implements the provisions of the Article 80.3; and
- c) The Contracting Authority does not exercise its right to early terminate the Contract due to Non-fulfillment by the Concessionaire of its obligations, caused by the Cause of Relief; and
- d) The Contracting Authority offers the Concessionaire Company the possibility of exemption from its obligations arising from this Contract, which are determined by the Independent Engineer.

**80.7** Written notification of the Independent Engineer regarding the occurrence of a Cause of Relief is binding on the Parties, unless one of the Parties objects in writing within 10 (ten) Business Days from the date of notification of the Independent Engineer in accordance with the following procedure:

- a) Within 10 (ten) Business Days from the objection of the Party, the Parties will hold a first meeting together with the Independent Engineer to discuss in detail the arguments of the Parties as well as the Independent Engineer regarding the Cause of Relief.
- b) After the first meeting, the Parties may conduct 2 (two) more meetings with a time span of 10 (ten) Business Days from each other.
- c) Within 10 (ten) Business Days from the last meeting, the Independent Engineer will come up with a final decision which is binding on the Parties except when they decide to apply the provisions made in Article 132 (*Escalation and Dispute Resolution*) of this Contract.

**80.8** The parties agree that, if any of them decides to go to the Process in accordance with the provisions of Article 132 (*Escalation and Dispute Resolution*) of this Contract to resolve the dispute arising under this Article, until a decision is taken by the Court, the Concessionaire Company has the right, but not the obligation, to suspend the Works or Services. The Concessionaire Company, in any case, shall be liable for the damage caused by the suspension of the works or services of this contract, in the event of a final decision, which determines that the failure to implement and enforce the concession contract was due to the fault of the concessionaire company.

**80.9** The Concessionaire Company is obliged to notify the Contracting Authority and the Independent Engineer immediately in case it becomes aware of any other information and / or material related to a Cause of Relief, as well as to notify the Contracting Authority and the Independent Engineer of the details of any information which are new or indicate that the information previously provided was substantially inaccurate and / or wrong.

#### **Article 81. State Action Substantially Contrary to the Contract**

**81.1** A” **State Action Substantially Contrary to the Contract**” means the cases when the Contracting Authority or any Relevant Authority, after the Signature Date of this Contract takes or fails to take any action of any nature, or fails to fulfill its obligations under this Contract, the Monitoring, Coordination Agreement referring to the Operating Service or in accordance with the Law (except for actions or omissions taken by the Contracting Authority to mitigate the effects of the breach by the Concessionaire Company), the effect of which directly the Company in costs or revenues, or its economic and financial position, including but not limited to, and:

- a) non-fulfillment by the Contracting Authority or any other Relevant Authority of any legal obligation, or not to execute or not to implement any Right of the Concessionaire;
- b) an Amendment to the Law which, after the application of the provisions on the Amendment of the Law in accordance with Article 82.1 (*Amendments to the Law*) to this Contract, still adversely affects the ability of the Concessionaire Company to undertake, perform and complete the Works and Services or Maintenance of Road, as well as the implementation of this Contract;

- c) the act or omission constitutes an abuse of governmental power, or is discriminatory in its very nature or effect, or is incompatible with the Law and / or creates obstruction or Damage;
- d) Expropriation, requisition, confiscation or nationalization of the shares of the Concessionaire / Concessionaire Company or other Rights of the Concessionaire Company, without a legal reason;
- e) any prohibition or conditionality on the receipt and transfer of benefits or revenues of the Concessionaire / Concessionaire Company, capital or financing (according to financial documents) outside the territory of the Republic of Albania (including the prohibition and restriction of monetary exchange);
- f) restrictions or measures having a similar effect in relation to the employment of necessary staff, regardless of their nationality and / or residence, except for restrictions on criminal convictions by the competent court;
- g) a Qualifying Law Amendment that directly or indirectly affects the realization of the Object of the Contract. For the avoidance of doubt, a Qualifying Law Amendment, on matters of economic compensation, shall be dealt with by the Concessionaire Company, or in accordance with the provisions of the Qualifying Amendment to the Law in accordance with 82.2 (*Amendments to the Law*) to this Contract, or as a State Action Substantially Contrary to the Contract, and not as two separate events together.

**81.2** When the Concessionaire Company is impeded, hindered or delayed in its work, due to a State Action Substantially Contrary to the Contract, the Concessionaire Company notifies the Contracting Authority, as soon as possible, and notifies:

- a) the existence and nature of State Action Substantially Contrary to the Contract;
- b) the effects of this action on the work of the Concessionaire Company;
- c) the steps that the Concessionaire Company has taken to avoid the negative effects of this action on the work of the Concessionaire Company.

The Contracting Authority, upon receiving the notification, has the right to request that the Concessionaire Company submit additional information and supporting evidence.

**81.3** The Contracting Authority will have a period of not more than 45 (forty-five) Business Days, from the date of receipt of this written notice, to make every possible effort to rectify the situation, which restores the general economic situation of the Concessionaire Company in what it would be if this State Action Substantially Contrary had not occurred. If the Contracting Authority does not affect its remediation within this period, the Parties shall be consulted within 14 (fourteen) calendar days after the expiration of this period in order to reach a mutually acceptable solution to the situation.

**81.4** In case a mutually satisfactory solution of the situation is not achieved within this period of 14 (fourteen) calendar days through:

- a) a necessary adjustment or adoption, or payment and / or extension, that may be fair and reasonable given the circumstances; and / or

- b) a fair and reasonable monetary facilitation according to the circumstances; and / or
- c) an extension of the Concession Period,

then, the Concessionaire Company may (i) continue to enforce its obligations under the Contract by considering the State Action Substantially Contrary to the Contract as a Cause of Relief or (ii) terminate the Contract in accordance with the early termination clause of the Contract for Non-fulfillment by the Contracting Authority, without any liability or damage, or cost to the Concessionaire Company, in case any other legal remedy provided in this Contract will not be sufficient to place the Concessionaire Company in the same economic position compared to the position in which it was located, before the occurrence of the State Action Substantially Contrary to the Contract, taking into account the continuing rights and obligations of the Concessionaire Company under this Contract, the Project and any other agreement provided in this Contract.

## **Article 82. Amendments to the Law**

**82.1** If there is any Amendment to the Law which is not a Qualifying Law Amendment which requires the Concessionaire Company to amend, modify, the Project, the quality, or the volume of Works or Services, the Concessionaire Company shall submit a proposal for amendment in accordance with Article 50 (*Changes Requested by the Concessionaire Company*).

**82.2** It will be considered "Qualifying Law Amendment":

- a) Discriminatory Law Amendment;
- b) Specific Amendment of the Law;

**82.3** It will be considered "**Discriminatory Law Amendment**", the Amendment of the Law, which is specifically applied:

- a) for the Project and not for similar projects; or
- b) for the Concessionaire / Concessionaire Company and for no other Person; or
- c) for Subcontractors engaged in the Project and for no other Person.

**82.4** It will be considered a "**Specific Law Amendment**" an Amendment to the Law specifically referring to the provision of Services or Works in connection with the same or similar services as the Services and Works provided for in this Contract, or to trade companies whose principal activity is to provide the same services and road works or similar to the Services and Works provided for in this Contract.

**82.5** For the avoidance of doubt, except for the changes provided for in 82.2, Qualifying Law Amendments which (i) do not adversely affect the ability of the Concessionaire Company to exercise, respect or perform any of the rights and obligations under this Contract or which do not affect the legality, validity, binding nature or applicability of this Contract or (ii) which do not affect the legality, validity, binding nature or enforceability of this Contract and (iii) are of a general nature in the Law on Taxes and / or Levies applicable



to all entities in the Republic of Albania shall not be considered Cause of Relief and/or compensation but without the right to compensation of the Concessionaire Company.

### **Article 83. Effects of Qualifying Law Amendment**

**83.1** If a Qualifying Law Amendment occurs, or is expected to occur, either Party may notify the other Party in writing and the Independent Engineer of the possible effects of such change, specifying:

- a) if an exemption from fulfillment of obligations is required, including the obligation to reach the scheduled end date of the relevant Segment;
- b) any necessary changes in the Works or Services caused or resulting from such a Qualifying Law Amendment;
- c) if any changes are required to the terms of this Contract or the Project Documentation;
- d) whether the implementation of the Qualifying Law Amendment will directly result in increased costs or loss of revenue of the Concessionaire Company;
- e) any Capital Expenditure required to implement the Qualifying Law Amendment, or that can be saved;
- f) any Necessary Approval that will be required to implement a Qualifying Law Amendment; and
- g) the way in which the Qualifying Law Amendment may affect the prices set by the Service Providers, including firms operated by the Shareholders of the Concessionaire Company, or their Related Companies.

**83.2** If, as a result of a Qualifying Law Amendment:

- a) The Concessionaire Company is not able to complete the Works, in order to be able to provide the relevant certifications in connection with the completion of a relevant Segment by the scheduled date for its completion;
- b) The Concessionaire Company is unable to fulfill any of its obligations under this Contract; or
- c) The Concessionaire Company has incurred or will incur costs which it would not otherwise have incurred, or has not generated or will not generate revenue, which it would otherwise have generated if it had not occurred such a Qualifying Law Amendment,

in this case the Concessionaire Company has the right to provide a benefit in the form of:

- i. the appropriate postponement of the Scheduled Completion Date of the relevant Segment Works, which will be suitable and sufficient to complete the Works;
- ii. necessary changes to the Project Documentation to take into account and reflect the Qualifying Law Amendment;
- iii. the right of compensation; and/or

- iv. an extension of the Concession Period according to the provisions of Law 125/2013 "*On Concessions and Public Private Partnership*", as amended; and/or
- v. non-application of the provisions for unilateral termination of the Contract of Concession for the default of the Concessionaire Company, if it has notified the Contracting Authority and the Independent Engineer regarding these claims within a period not exceeding 60 Business Days from the entry into force of the Amendment to the Law.

**83.3** In the event of the existence of the above-mentioned conditions, the Parties shall meet to discuss the effects brought about by the Qualitative Change of the Law within 20 (twenty) Working Days from its approval and shall try to reach an agreement within 30 (thirty) Working days from their meeting. In case the Parties do not agree on how to address the Qualifying Change in the Law, then the Concessionaire Company has the right to resolve the dispute arising under this Article and according to the provisions of Chapter 19 Article 132 (*Escalation and Resolution of Disputes*) of this Contract.

## **CHAPTER 12 RESPONSIBILITY, PENALTIES, THIRD PARTIES**

### **Article 84. Solidary liability**

The parties acknowledge that the Concessionaire and the Concessionaire Company are jointly and severally liable for the fulfillment of the conditions of this Contract.

### **Article 85. Penalties**

**85.1** If as a result of the Non-fulfillment of the Concessionaire Company, the completion of the Works is not realized within the deadlines specified in the Schedule of Works for the fault of the Concessionaire Company, the Contracting Authority may send a Notice of Non-fulfillment of Obligations to the Concessionaire Company in accordance with Article 97 (*Contract Termination Due to Non-Fulfillment by the Concessionaire Company*), making available a reasonable time to carry out corrective actions, but not less than 30 (thirty) Business Days after submitting the Notice of Correction to the Concessionaire Company.

**85.2** If the Concessionaire Company does not take all necessary corrective action to rectify the causes of default set forth in the Notice of Non-fulfillment of Obligations by the Concessionaire Company, within a reasonable time, it shall pay the Contracting Authority a penalty of 0.0001% of the Investment Value for each month of delay. This penalty begins to be applied immediately after the end of a period of 60 (sixty) Business Days from the last date of the deadline specified in the Notice of Non- fulfillment of Obligations sent by the Contracting Authority according to paragraph 85.1.

**85.3** In case of finding violations that lead to the application of sanctions under this article, the Contracting Authority and the Concessionaire Company will discuss for a period of 90 (ninety) days the violation. When deciding on the application of the relevant penalty, penalties are paid to the account of the Contracting Authority within 90 (ninety) Business Days from the notification of the Contracting Authority.

**85.4** The total amount of all applicable sanctions as the case may be, from this Contract in charge of the Concessionaire Company, throughout the Duration of the Contract shall not exceed the amount secured by the Contract Guarantee.

### **Article 86. Indemnification against Contracting Authority in relation to third**

## **parties**

- 86.1** The Concessionaire Company undertakes to compensate the damage or the claim for compensation of the Contracting Authority in relation to any claim for damage to any third party, certified by a final decision based on events or omissions or any other circumstance related to non-fulfillment of the obligations of the Concessionaire Company under this Contract, or by any other action or omission of the Concessionaire Company.
- 86.2** The obligation of the Concessionaire Company to compensate the Contracting Authority as provided in this Article shall be reduced in proportion to the extent that the negligent acts or omissions of the Contracting Authority or Relevant Authorities or any of their representatives or employees have contributed to this damage.
- 86.3** Notwithstanding any other provision in this Contract, the Concessionaire Company or the Concessionaire shall not be liable for claims for damages, losses, damages, Defects, repairs and delays in the implementation of the Works, which have resulted from:
- a) the act or omission of the Contracting Authority or of the Contracting Authority Party or of a third party;
  - b) violation by the Contracting Authority of this Contract or the Law, as well as violation of the Relevant Authority;
  - c) the act of the Concessionaire Company is carried out according to the instructions of the Representative of the Contracting Authority;
  - d) the act of the Concessionaire Company is carried out in full accordance with the provisions of this Contract, the Law and the Necessary Approvals.
  - e) Force Majeure Events;

## **CHAPTER 13 INSURANCE**

### **Article 87. Insurance**

- 87.1** The Concessionaire Company maintains the necessary insurances of the Project under *Appendix 1 (Insurances)* with the conditions set out in this Appendix and this Article ("**Insurance**"). The Concessionaire submits the proposed Insurance Terms to the Contracting Authority for review and approval at least 30 (thirty) Business Days prior to the purchase of such Insurance. Within 30 (thirty) Business Days from receiving the conditions proposed by the Concessionaire Company, the Contracting Authority has the right to request amendments to the proposed Insurance conditions (acting reasonably), if these do not reflect the requirements of *Appendix 1 (Insurances)* or of this article.
- 87.2** The Concessionaire Company will make reasonable efforts to ensure that its Subcontractors also purchase and maintain all the insurance required by law.
- 87.3** The Concessionaire Company is responsible for covering all costs related to Insurance at its own expense. The fact that the Concessionaire Company is or is not obliged to purchase the insurance of certain risks under this Contract, does not affect the Party that bears the financial consequences of such a risk.

## **Article 88. Insurance Terms and Conditions**

### **88.1 Insurance:**

- 1) will be realized with insurance companies;
- 2) will keep intact the claims for compensation submitted by the Contracting Authority; and
- 3) in case of cancellation, change or non-renewal, they must be notified in writing to the Contracting Authority at least 30 (thirty) calendar days in advance.

**88.2** The Concessionaire Company will make a claim for compensation from the Insurance that the Concessionaire Company has at its disposal, to reduce the value of any claim of the Concessionaire to the Contracting Authority, under this Contract. The value of a Concessionaire Company claim for damages from the Contracting Authority under this Contract, including in connection with a Force Majeure Event, shall be reduced by the amount effectively obtained by the Insurance Concessionaire Company.

**88.3** Either Party shall refrain from taking any action, or take any reasonable action, in order to avoid situations that would result in an Insurer of the Insurance refusing to pay a claim for damages under any Insurance.

## **Article 89. Documentation related to Insurance**

**89.1** The Concessionaire Company, upon written request to the Contracting Authority, grants him:

- a) copies of all insurance policies related to Insurance (along with any other information required by the Contracting Authority in relation to these insurance policies);
- b) Evidence that the premiums payable under all insurance policies related to the Insurance have been paid and the Insurance is in full force, in accordance with the provisions of CHAPTER 13 (*Insurances*) and Appendix 1 (*Insurances*); and
- c) as soon as possible, but in any case on or before the date of renewal, a copy of the provisional insurance document relating to the Insurance, if applicable.

## **Article 90. Unsecured Risk**

90.1 In case of Unsecured Risk, it will be subject to negotiation by agreement between the Parties.

## **Article 91. Failure to purchase and maintain Insurance**

**91.1** If the Concessionaire Company is in violation of Article 87 (*Insurance*) above, the Contracting Authority requests in writing the Concessionaire Company to submit to it the Insurance with full validity, within 30 (thirty) Business Days from the receipt of the notification. If the Concessionaire Company is in breach of this Article, after obtaining prior written approval from the Concessionaire Company, the Contracting Authority may pay any premium required to maintain the Insurance provided for in Article 87 (*Insurance*) above or may purchase itself such Insurance. In each case, the Contracting Authority has the

right to recover these amounts from the Concessionaire Company through a written request documenting the payments made.

- 91.2** Nothing in this Article shall oblige the Concessionaire Company to pay the insurance in respect of an Unsecured Risk, except when the cause that a risk has become an Unsecured Risk is a faulty act or omission of the Concessionaire Company.

**Article 92. Use of Insurance Sums**

All proceeds received from Insurance under each physical injury policy will be used to repair, rehabilitate and replace any part or sections of the Road in respect of which the proceeds have been received or to compensate them, or to replace expenses in case the repair or rehabilitation was done before the Insurance reimbursement period.

**CHAPTER 14 TRANSFER OF OBJECT OF THE CONTRACT**

**Article 93. Procedure for the transfer at the end of the Concession Period**

- 93.1** No later than 3 (three) years before the last date of the Concession Period, the Concessionaire Company conducts the initial survey, in order to assess the condition of the Road and take the necessary measures to carry out the plan regarding the need for Capital Expenditures , if any, as well as any Work to be agreed between the Parties.

- 93.2** No later than 18 (eighteen) Months before the return, in coordination with the Independent Engineer, the Concessionaire Company prepares a preliminary return assessment plan, which will be used to determine the progress of the Road Maintenance for the remainder of the term.

- 93.3** The preliminary return survey will identify any adjustment Works that may be required in order for the Road to meet the required Standards, the submission requirements on the Contract Completion Date, and the estimated costs of performing these Works.

- 93.4** The Parties shall negotiate and agree in writing on the steps and procedures to be followed at the time the Road is made available to the Contracting Authority.

- 93.5** The Concessionaire Company returns the Site, Works and Operating Infrastructure, if the latter was created by the Concessionaire Company to the Contracting Authority on the Contract Completion Date, in good and functional condition, maintained within the Standards set out in the Project, without any burden or obligation.

**Article 94. Early transfer**

- 94.1** If one of the Parties makes an early termination of the Contract in accordance with the provisions of CHAPTER 15 (*Early Termination of the Contract*), the Parties shall agree on the procedures to be followed to carry out the delivery of Sites or Products as the case may be (including for steps to be taken for their release from encumbrances or liabilities) to the Contracting Authority, which receives them (including temporary Works). The Parties agree that the Contracting Authority shall take over the Sites or Products exempt from the encumbrances or obligations as long as it has made full compensation to the Concessionaire Company in accordance with the provisions of CHAPTER 16 (*Compensation for Termination of the Contract*).

- 94.2** The Concessionaire Company will submit to the Contracting Authority the

Maintenance Manuals together with all documents and data related to the Project Implementation and data updated during the construction, to the extent that they are finalized at the time of completion, or, otherwise, the sketches as they are in the current state.

- 94.3** The parties may discuss the possibility of obtaining the equipment and assets of the Concessionaire Company by the Contracting Authority for the purpose of completing the Works, after the Concessionaire Company has been reimbursed for their costs. In case of disagreement, the Contracting Authority shall provide the Concessionaire Company with reasonable access and exit and reasonable use of the Site and / or Products for as long as it is necessary to remove staff, staff, equipment and machinery.

#### **Article 95. Rights upon transfer**

- 95.1** In addition to the rights expressed that will continue after the termination of this Contract, upon delivery / transfer the Concessionaire Company is no longer responsible for the maintenance and repair of subsequent damages to the Products. The Rights of the Concessionaire Company under this Contract, including the obligation of the Concessionaire Company to maintain the Work shall terminate automatically and the Contracting Authority shall assume and benefits the rights and obligations of the Concessionaire Company to the Products.

- 95.2** The Concessionaire Company shall reasonably cooperate with the Contracting Authority to ensure the transfer of the Services to a third party, designated by the Contracting Authority to operate and maintain the Works after the Contract Closure Date.

### **CHAPTER 15 EARLY TERMINATION OF THE CONTRACT**

#### **Article 96. Early termination**

- 96.1** Except for the expiration of this Contract on the Contract Closure Date, the Parties may terminate this Contract in accordance with the provisions of this Article.
- 96.2** The Parties agree that the Contract may be terminated or withdrawn, only for the reasons expressly expressed in the provisions of this Article and the Law no.125/2013, date 25.04.2013 “On concessions and public and private partnership”, as amended.
- 96.3** The early termination of this Contract is done without violating the rights and obligations of the Parties expressly provided in this Contract, or those rights and obligations that apply after the Contract Termination Date due to their nature.

#### **Article 97. Contract Termination due to Non-fulfillment by the Concessionaire Company**

- 97.1** Will be considered “**Non-Fulfillment by the Concessionaire Company**” any of the following events occurring through the fault of the Concessionaire company and not as a result of the actions or omissions of the Contracting Authority:
- a) violation of the obligations of the Concessionaire Company, which:
    - i. significantly affects and for a long time the ability of the Contracting Authority to fulfill the obligations provided by law and the Contract; or
    - ii. significantly affects the use of the Road by the Contracting Authority and the User;

- b) at the end of the bankruptcy proceedings, the final decision of the court which accepts the liquidation of the Concessionaire Company, related to insolvency;
- c) except when this is justified by other provisions of this Contract, non-commencement of Works by the Concessionaire in accordance with the program within 3 (three) Months from Works Commencement Date;
- d) Abandonment of Works by the Concessionaire Company;
- e) non-compliance with the completion of Works according to the Schedule of Works part of the Project Implementation;
- f) non-issuance of the Certificate of Utilization / Permit for all relevant Segments of the Road within the deadline for the Certificate of Utilization / exploitation permit;
- g) The Concessionaire Company does not initially and continuously make the necessary Insurance under the Contract;
- h) The Concessionaire Company violates the restrictions set out in the Contract in Article 10 (*Right of Subcontracting*) for subcontracting;
- i) The Concessionaire Company violates the restrictions set forth in Article 120 (*Transfer of Shares of the Concessionaire Company*) of this Contract; and / or
- j) non-fulfillment of conditions precedent which depend on the actions or omissions of the Concessionaire and / or the Concessionaire Company according to the provisions provided in the Article 6 of this Contract.

**97.2** Subject to the provisions of the Article 97.3 of this Contract, in the circumstances when a Non-fulfillment has occurred by the Concessionaire Company, the Contracting Authority has the right to terminate this Contract immediately after a written notice 30 (thirty) Business Days in advance to the Concessionaire Company ("**Notice of Non-fulfillment of Obligations by the Concessionaire Company**").

**97.3** Except in the cases identified in paragraphs (b) and (i) of Article 97.1, before the Contracting Authority sends a Notice of Non-fulfillment of Obligations by the Concessionaire Company, the Contracting Authority shall send a notice to correct its non-fulfillment ("**Notice of Correction**"), which contains a description of non- fulfillment by the Concessionaire Company and a period for their correction, which will be not less than 30 (thirty) Business Days after the submission of the Notice of Correction to the Concessionaire Company.

**97.4** The Contracting Authority will not send a Notice of Non-fulfillment to the Concessionaire Company if:

- a) The Concessionaire company corrects the non-fulfillment by the date provided in the Notice of Correction; or
- b) In case of Non-fulfillment by the Concessionaire Company, defined in letters a), c), d), e), f), g), h) to Article 97.1 of this Contract and depending on the Financing Agreement, if any, the Concessionaire Company submits to the Contracting Authority within the correction period provided in the Notice of Correction, a plan acceptable to the Contracting Authority for the correction

of Non-fulfillment by the Concessionaire Company and the Concessionaire Company, without any further delay, starts implementing the plan in accordance with its terms.

**97.5** Except as provided in the provisions of the Financing Agreement, if there is such a Financing Agreement, if at any time the Concessionaire Company does not comply with the correction plan accepted by the Contracting Authority in accordance with Article 97.4 (b) above, the Contracting Authority may send to the Concessionaire Company a second Notice of Correction, requesting the fulfillment of the plan within a reasonable time which may not be less than 30 (thirty) Business Days. In case of non-fulfillment of the plan within this deadline, then the Contracting Authority sends to the Concessionaire Company, the Notice of Non-fulfillment of the Obligations of the Concessionaire Company and this Contract terminates on the date specified in the Notice of Non-fulfillment by the Concessionaire Company.

**Article 98. Contract Termination due to Non-fulfillment of Obligations by the Contracting Authority**

**98.1** Will be considered” **Non-fulfillment by the Contracting Authority**” each of the following events or facts:

- a) The Contracting Authority (or National Road Operating Entity) does not pay the respective amounts of Payments by the Contracting Authority under the Contract and / or other payments or obligations arising from the Operating Agreement;
- b) Failure to complete the Delivery of the Project Territory on time without any reasonable causes;
- c) Expropriation, sequestration, temporary use by the Contracting Authority and / or any Relevant Authority, of a significant part of the assets of the Concessionaire / Concessionaire Company or a Subcontractor or of the shares / quotas of the Concessionaire or Concessionaire Company, for while these actions as above do not occur as a direct result of a Non-Fulfillment by the Concessionaire Company;
- d) Transfer of the Contract to a third party by the Contracting Authority contrary to the provisions of Article 119 (*Transfer from the Contracting Authority*) of this Contract;
- e) Violation of the obligations of the Contracting Authority and / or Relevant Authorities provided in this Contract or the Operating Agreement that make it impossible or significantly impede the Concessionaire Company to carry out the Works and / or Services for a period longer than 1 (one) Month;
- f) any Law Qualifying Amendment, which is unforeseeable and which makes it impossible or significantly hinders the implementation of the Contract by the Concessionaire Company and or damages its financial and economic interests under this Contract;
- g) any State Action Substantially Contrary to the Contract; and
- h) Non-fulfillment of the Preliminary Conditions Precedent which depend on the actions or omissions of the Contracting Authority and / or the Contracting Authority Party according to the provisions provided in Article 6 (Preliminary



Conditions) of this Contract.

**98.2** In circumstances where a Non-fulfillment has occurred by the Contracting Authority, the Concessionaire Company has the right to terminate this Contract by sending a prior notice of Non-fulfillment by the Contracting Authority ("**Notice of Non- fulfillment by the Contracting Authority**").

**98.3** Prior to the issuance of a Notice of Non-fulfillment by the Contracting Authority, the Concessionaire Company must send a Notice to the Contracting Authority to rectify its non-fulfillment ("**Notice of Correction**"). The Notice of Correction must contain a description of the Non-fulfillment by the Contracting Authority and a period for their correction, which will be not less than 30 (thirty) Business Days after the submission of the Notice of Correction to the Contracting Authority.

**98.4** The Concessionaire Company may not send to the Contracting Authority the Notice of Non-fulfillment by the Contracting Authority if:

- a) The Contracting Authority shall correct the Non-fulfillment by the date provided in the Notice of Correction; or
- b) In case of a Non-fulfillment by the Contracting Authority, the latter submits to the Concessionaire Company a proposal acceptable to the Concessionaire Company for the correction of the Non-fulfillment by the Contracting Authority within the correction period provided in the Notice of Correction and the Contracting Authority starts implementing the plan according to its conditions without any further delay.

**98.5** If the Contracting Authority fails to comply with the remedial plan accepted by the Concessionaire Company in accordance with paragraph 99.4 (b) above, the Concessionaire Company may send a second Notice of Correction to the contracting Authority, requesting that the plan be completed within a time limit reasonable which may not be less than 30 (thirty) Business Days. In case of non-fulfillment of the plan within this deadline, then the Concessionaire Company sends to the Contracting Authority, the Notice of Non-fulfillment of the Obligations of the Contracting Authority and this Contract terminates on the date specified in the Notice of Non- fulfillment of the Contracting Authority.

**98.6** In cases of termination of the Contract due to Non-fulfillment by the Contracting Authority, the Contract Termination Date will be considered as follows:

- a) In case of Non-fulfillment by the Contracting Authority defined in letter (c) of the Article 98.1 is the date of submission of the Notice of Non-fulfillment by the Contracting Authority; or
- b) In case of all other Non-Performances by the Contracting Authority, it is a date no later than 60 (sixty) Business Days after the submission of the Notice of Non-Fulfillment by the Contracting Authority to the Contracting Authority.

In the event of a Failure by the Contracting Authority set forth in letter (a) of article 98.1, the Contracting Authority may prevent the consequences of termination and this Contract does not terminate on the date specified in the Notice of Non- fulfillment by Contracting Authority, in the circumstances when the Contracting Authority corrects the Non-fulfillment by the Contracting Authority within 60 (sixty) Business Days from the receipt of the Notice of Non-Fulfillment

## **Article 99. Contract Termination due to a Force Majeure Event**

When the Parties do not agree to such terms within 6 (six) Months from the date of commencement of the Force Majeure Event, and such Force Majeure continues, or its consequences continue to be such that the Affected Party is unable to fulfill all, or most of its obligations under this Contract, either Party may terminate this Contract by giving 30 (thirty) Business Day Prior notice to the other Party.

## **Article 100. Notice of Termination of the Contract**

Each of the Parties requesting the termination of this Contract in accordance with the above points, shall notify the other Party in writing in advance. The notice must contain:

- a) appropriate details underlining the cause of the termination;
- b) Contract Termination Date;
- c) details of calculation of payments as a result of termination of the Contract;
- d) any other relevant information.

## **Article 101. Contract Termination by consensus**

The parties have the right to terminate the Contract by mutual consent expressed in writing, negotiating in good faith the manner of compensation of the Parties.

## **CHAPTER 16 COMPENSATION FOR CONTRACT TERMINATION**

### **Article 102. General**

**102.1** If this Contract terminates early, after sending the Notice of Early Termination in accordance with the provisions made in CHAPTER 15 (*Early Termination of the Contract*) of this Contract, the Contracting Authority and the Concessionaire are entitled to receive the amount of Compensation for Contract Termination in accordance with this article.

**102.2** Except as otherwise expressly provided in this Agreement, the Parties acknowledge that the right to early termination and payment of the amount of Compensation for Contract Termination, and / or, as the case may be, the right to deduct payments, is a sufficient solution for mutual requests regarding the early termination of this Contract.

**102.3** Any dispute regarding the amounts calculated or determined in accordance with this Article shall be settled in accordance with the provisions of Article 132 (*Escalation and Dispute Resolution*) of this Contract.

### **Article 103. Compensation for Contract Termination for Non-fulfillment by the Concessionaire Company**

**103.1** In circumstances where this Contract is terminated for Non-fulfillment by the Concessionaire in accordance with the provisions of Article 97 (*Termination due to Non-fulfillment of Obligations by the Concessionaire Company*) of this Contract, the Concessionaire Company pays to the Contracting Authority an amount as Compensation for the Contract, equivalent to the cumulative value of:

- a) any payment including penalties applied to the Concessionaire Company by the Contracting Authority, in accordance with the provisions of this Contract , accrued up to the Contract Termination Date; and
- b) without prejudice to the exercise of any right of substitution of Lenders under Article 122 (*Right of Substitution by Lenders*) after the Works Commencement Date, any costs or expenses for the transfer of possession and the transfer of ownership of the Maintenance Center from the Concessionaire Company to the Contracting Authority.

The above does not exclude the right of the Contracting Authority to claim any compensation or damage caused against the Contracting Authority which belongs to it in accordance with the provisions of the Law.

**103.2** In cases where the Concessionaire Company is required to make a payment to the Contracting Authority pursuant to paragraph 103.1 above, the full amount for Compensation for Contract Termination shall be paid as soon as possible.

**103.3** Without prejudice to the rights of the Contracting Authority, when Article 103 (*Compensation for Contract Termination for Non-fulfillment by the Concessionaire Company*) of this Contract applies, when this Contract is terminated as a result of the Concessionaire Company's Default, depending on the stage of the Project on the Contract Completion Date, the Concessionaire Company:

- a) **During the Development Phase** (Period from the Effective Date of the Concession Contract until the fulfillment of the Conditions Precedent): It will not receive any compensation from the Contracting Authority.
- b) **During the Construction Phase:** It shall benefit from all costs for the development and implementation of the Project (including costs from the Effective Date of the Concession Contract until the fulfillment of the Conditions Precedent, design and construction costs), but excluding additional costs incurred by the Concessionaire Company which are not provided for in the Contract, and deducting:
  1. payments or amounts that the Concessionaire Company owes to the Contracting Authority under this Contract (including payments under Article 103.1 (a) and (b)); and
  2. reasonable payments made by the Contracting Authority for the maintenance of the Works in their current condition.

c) **During the Operation Phase:** It shall benefit from a compensation as follows:

The total value of the Tariff Revenues that the Concessionaire Company would have received from the Contract Completion Date until the end of the Concession Period in based on the Financial Model with the latest updates, minus the total of all costs that the Contracting Authority anticipates having as a result of the termination of the Contract which will be calculated.

In calculating the costs, the Contracting Authority shall consider the following components (without double counting):

1. A reasonable assessment of the risk of any cost overruns that will arise, whether or not initially anticipated;
2. The costs of executing the Works and/or providing the Services that are expected to be necessary for the

Contracting Authority, from the date of termination of the Contract until the date of expiry of the Contract, to carry out the Works and provide the Services of the Project to the required Standard;

3. The necessary remedial costs in respect of the Works carried out by the Concessionaire Company and the provision of the Project Services to the required Standard (including any costs which the Contracting Authority anticipates to be incurred in completing the Works) and the additional operating costs necessary to restore the operational services to the required standard, less (to the extent that such amounts are included in the costs provided for in this paragraph) the aggregate amount of any security deposit received or to be received by the Concessionaire and the amounts payable by the Contracting Authority for capital expenditure, to the extent not yet paid.

All the above estimated amounts of income and costs should be calculated in nominal terms according to current indexed prices.

103.4 Notwithstanding any other provision under Article 103.3 above, if, following the Lender's request to exercise the right of substitution under Articles 122, 123, and 124 of this Contract, such substitution is not carried out due to the fault of the Contracting Authority, then exceptionally and only in such case, the Concessionaire Company shall be entitled to also benefit from the Obligations towards the Lenders.

103.5 For the avoidance of doubt, in calculating the Concessionaire Company's liability in respect of the Compensation for Termination of the Contract for Non-Performance by it, the Contracting Authority shall first use the value of the Contract Guarantee, unless the term of the Contract Guarantee has expired in accordance with this Contract. If there is a Payment from the Contracting Authority that is still outstanding on the Contract Completion Date, this payment will be deducted from the value of the Contract Guarantee.

103.6 In the event of termination of the Contract due to Non-Compliance by the Concessionaire Company provided for in Article 97.1 letters (b), (d) and (j), the Concessionaire Company shall not receive any compensation from the Contracting Authority.

103.7 For the purposes of this Article, "Liabilities to Lenders" are the amounts of the following components:

(i) principal, interest (including penalties for non-payment, but only that ascertained before termination of this Contract, as a result of Non-Compliance by the Contracting Authority), bank commissions, costs and expenses incurred or incurred in a regular manner or that the Concessionaire Company owes or has remained unpaid to the Lenders by the Concessionaire Company, based on the Direct Agreements until the Contract Termination Date (including also the costs of payments in the event of early repayment of the loan); and

(ii) all amounts owed by the Concessionaire to the Lenders by reason of the early termination of interest rate hedging agreements (including any early termination costs and commitment fees payable as a result thereof), provided that the Concessionaire and the Lenders shall use reasonable efforts to mitigate such amounts to the extent practicable.

#### **Article 104. Compensation for Contract Termination due to Non-fulfillment by the Contracting Authority**

**104.1** "Compensation for Contract Termination due to Non-fulfillment by the Contracting Authority" shall be considered the amount equal to the cumulative value of:

- a) Liabilities to Lenders related to the Works performed up to the Date of Completion of the Contract;

- b) The value of the Works performed until the moment of termination of the Contract due to Non-fulfillment by the Contracting Authority,
- c) The value of the liabilities to third parties arising from this Contract and which the Concessionaire Company owes up to the Contract Termination Date, agreed by the Independent Engineer;
- d) Invested Capital by deducting all payments in the form of dividends or similar profit distributions, paid before the Contract Termination Date (if the difference is positive);
- e) Payments by the Contracting Authority that have not been made by the Contract Termination Date;
- f) An amount which when collected together with the dividends (or similar profit distributions) that the Concessionaire Company has paid on the basis of the Invested Capital on or before the Contract Termination Date, taking into account the moment when it was actually performed this payment, provides a real internal rate of return ("IRR") on the Invested Capital equal to the Internal Rate of Return on Invested Capital set out in the Financial Model;
- g) Penalties provided in this Contract for the Contracting Authority;
- h) Any other Damage or right to compensation that arises for the Concessionaire Company, or that it had to bear or cover, as a result of Non-fulfillment of the Contracting Authority and termination of the Contract due to this non-fulfillment; and
- i) Return of the Contract Guarantee, after verification and deduction of any obligation (if any) of the Concessionaire Company, until the date of Non-fulfillment by the Contracting Authority.

**104.2** If this Contract terminates early for Non-fulfillment by the Contracting Authority, the latter pays to the Concessionaire Company the Compensation for Contract Termination due to Non-fulfillment by the Contracting Authority, without excluding any compensation or Damage caused to the Concessionaire Company which belongs to it under the application of provisions of the Law.

**Article 105. Compensation for Contract Termination due to the Force Majeure Event**

**105.1** The Concessionaire Company is entitled to receive “**Compensation for Contract Termination due to a Force Majeure Event**”, which is an amount equal to the aggregate value of:

- a) Liabilities to Lenders related to the Works performed until the date of Contract Termination.
- b) Invested Capital;
- c) Amount of obligations toward third parties, including Costs of Early Termination of the Subcontract resulting from the implementation or termination of the Contract;

- d) Payments of the Contracting Authority owed to the Concessionaire Company and which are still outstanding on the Contract Termination Date; and
- e) Return of the Contract Guarantee, after verification and deduction of any obligation (if any) of the Concessionaire Company, until the Contract Termination Date due to Force Majeure.

Minus

- a) Payments by the Contracting Authority settled before the Contract Termination Date;
- b) Payments that the Concessionaire Company has received from the Insurance.

**105.2** If as a result of an Event caused by a Force Majeure the Concessionaire Company is unable to meet any of its obligations under this Contract, the provisions of Article 80 (Cause of Relief) shall apply.

**105.3** If as a result of an Event caused by a Force Majeure the Contracting Authority is unable to fulfill any of its obligations under this Contract, then the Contracting Authority may receive a benefit in the form of:

- a) changing his obligations insofar as they are affected by the Force Majeure Event;
- b) exclusion from the termination of the Contract due to the fault of the Contracting Authority insofar as the Non-fulfillment is caused or is materially influenced by the existence of the Force Majeure Event, provided that the Force Majeure Event is not deemed to arise from a state of insolvency of the Contracting Authority for any reason.

**105.4** The Contracting Authority may claim such benefits only in circumstances where it has notified the Concessionaire Company and the Independent Engineer of its request to grant any of these benefits without delay, but in any case not later than the maximum:

- a) 20 (twenty) Business Days after the Concessionaire Company became aware of the occurrence of a Force Majeure Event; or
- b) 30 (thirty) Business Days after the event caused by the Force Majeure Event.

## **CHAPTER 17 PAYMENTS**

### **Article 106. Annual Revenue Reconciliation Payment**

Starting from the beginning of the Warranty Period:

- a) if the Tariff Revenue collected for the respective Year are less than the Basic Revenue for that Contract Year, the Contracting Authority shall pay to the Concessionaire Company the Revenue Deficit Reconciliation Payment under Appendix 4 (*Contracting Authority Payments during the Warranty Period*); or

- b) if the Revenue from the Tariff collected for the respective Year is more than the Basic Revenue for that Contract year, the Concessionaire Company pays to the Contracting Authority the Revenue Surplus Reconciliation Payment according to Appendix 4/1 (*Surplus Payment of the Revenue to the Contracting Authority*).

#### **Article 107. Annual statements of payments**

**107.1** The Concessionaire must submit to the Contracting Authority an annual statement of payments that the Parties owe to each other (“**Annual Statement of Payments**”) no later than 1 (one) Month after the end of the previous Contract Year, in respect of the Year of the previous Contract (“**Deadline for Submission of Annual Statements of Payments**”) which provides detailed information on:

- 1) Revenue Reconciliation Payment payable;
- 2) Compensation for Road Tariff Evasion;
- 3) Data on all Additional Revenue earned in accordance with the provisions of Article 77 (*The Right to generate Additional Revenue*) of this Contract; and
- 4) All other Payments from the Contracting Authority.

together with an invoice in Euro and/or ALL for the amount to be paid by the Contracting Authority to the Concessionaire Company or, as the case may be, a statement in Euro and/or ALL of the amount owed by the Concessionaire to the Contracting Authority.

**107.2** In the event that during the Operating Period, the right to provide Operating Services has passed to the Operating Entity, the obligation under the above paragraph to submit information on Annual Revenue Reconciliation Payment payable and any other liability related to it provided in this Contract, will be charged to the Operating Entity, which must submit this information to the Concessionaire Company and the Contracting Authority, no later than 20 (twenty) Days after the end of the previous Year of the Contract, in relation to the previous Year of the Contract.

#### **Article 108. Annual Payments**

Except when the Contracting Authority contests the amount (or part thereof) contained in the Annual Statement of Payments (in which case the provisions of Article 115 (*Contested Amounts*), as follows applies:

- a) when the Contracting Authority has to pay the Concessionaire Company in accordance with the provisions of Article 78 (*Tariff Evasion*) the Contracting Authority shall pay the amount (or the undisputed part of that amount) to the Concessionaire Company within 60 (sixty) days from the deadline for submission of the Annual Statement of Payments; or
- b) when a payment has to be made by the Concessionaire to the Contracting Authority in accordance with Article 106 (*Annual Revenue Reconciliation Payment*) and Article 107 (*Annual Statements of Payments*) above, the Concessionaire Company shall pay that amount (or the undisputed part) of that amount) Contracting Authority within 60 (sixty) days from the

Deadline for Submission of the Annual Statement of Payments.

- c) To avoid any misunderstanding, the annual payment that the Contracting Authority or any Party of the Contracting Authority owes to the Concessionaire Company or the Concessionaire according to the provisions of this Contract, deal with the reconciliation of the differences in payments between the Parties, on an annual basis, without avoiding in any way the obligation of making the relevant payments in accordance with the terms and provisions of this Contract, including the amounts to be paid by the Contracting Authority and/or National Road Operation Entity Operation, in accordance with the provisions and deadlines of the Operation Agreement.

**Article 109. Request for Payment of Compensation for Contract Termination**

Upon receipt of written notice of termination of the Contract pursuant to CHAPTER 15 (*Early Termination of the Contract*), as the case may be, by the Concessionaire Company or the Contracting Authority, the Concessionaire company shall submit to the Contracting Authority a list specifying in writing all amounts claimed under CHAPTER 16 (*Compensation for Contract Termination*), detailed calculations of each amount claimed, and a description of why such amount became payable before the Contract Termination Date or became payable as result of termination of this Contract. This list will be attached to a certification of an authorized official of the Concessionaire Company, certifying for and on behalf of the Concessionaire Company, the reasonableness and accuracy of the statements made (hereinafter, together with the list “**Request for Payment**”).

**Article 110. Information required to determine the amount of compensation**

In assessing the Request for Payment, the Contracting Authority can rely in any information and/or document attached to the request that relates to this assessment.

**Article 111. Modalities of payment of Compensation for Contract Termination**

**111.1** The Contracting Authority and the Concessionaire Company will meet within 20 (twenty) Business Days from the submission of the Request for Payment to discuss how to pay the amount of Compensation for the Contract Termination (if it will be full, in installments, term, etc.).

**111.2** If the Parties agree to installment payments, portions of the Compensation for the Contract Termination amount, the payment date of which has been deferred (not paid on time), will generate interest equal to the higher of (i) interest provided by Law, or (ii) the interest provided for in the Financing Agreement, starting from the Contract Termination Date. The Contracting Authority may at any time prepay the remaining percentage of the amount of the Compensation for the Contract Termination, provided that it does so on the due date of the installment payment and notifies the Concessionaire company no later than 30 (thirty) Business Days ahead.

**111.3** If the Contracting Authority fails to pay any of the installments specified in paragraph 111.2 above, the Concessionaire company may request immediate payment of the outstanding amount of the Compensation for the Contract Termination, including accrued interest, by sending a notice in writing within 30 (thirty) Business Days from the date of notification.

**Article 112. Value added tax**



Unless expressly provided otherwise, all liabilities and amounts under this Contract are calculated without VAT.

### **Article 113. Full Payment**

Except as expressly agreed in this Contract, the Contracting Authority shall not hold any amount (belonging to the Concessionaire Company as Compensation for Contract Termination Due) payable in accordance with the provisions of CHAPTER 16 (*Compensation for Contract Termination*) above, if as a result of such compensation / retention, the amount actually paid to the Concessionaire Company in connection with the termination of the Contract will be less than the unpaid Liabilities to Lenders of the Concessionaire Company. Subject to the above, the Contracting Authority may reimburse an amount owed to it by the Concessionaire Company with the amount of compensation for Contract termination, only if such a thing is expressly agreed in this Contract and if it is provided for in the legal acts and bylaws.

### **Article 114. Currency of making Payments**

**114.1** When the Parties have to make a payment based on the Annual Statement of Payments or the Request for Payment, such payment is paid in Lek after the exchange of the amount in Euro as shown in the respective Annual Statement of Payments or in the Request for Payment, at the official rate of Euro / ALL exchange of the Bank of Albania used on the day of payment.

**114.2** With respect to all Payments that the Contracting Authority will have to make under this Contract, in the event that the ALL currency no longer exists and the Euro currency no longer exists, then the accounts will be made in the US dollar currency, at an exchange rate equivalent to the exchange rate of the Euro against the US dollar on the Effective Date.

### **Article 115. Disputed Amounts**

**115.1** When the Contracting Authority objects to an amount presented in the Annual Statement of Payments for that specific year of the Contract or in the Request for Payment, the Contracting Authority notifies the Concessionaire Company of its non-acceptance in writing no later than 20 (twenty) Business Days from the day that the Contracting Authority receives the Annual Statement of Payments or the Request for Payment, stating the reasons and any available evidence that it has to confirm its statements which contradict the details presented in the Annual Statement of Payments or the Request for Payment.

**115.2** After the end of the period provided for in paragraph 115.1 above, the Contracting Authority may contest a value presented in the Annual Statement of Payments or Request for Payment, provided that even if it objects to this value, it shall make the relevant payment in full of the accepted value and not be entitled to withhold or reimburse any payment in return for such accepted value, which he would otherwise be obliged to pay to the Concessionaire Company other than the disputed value under discussion, for which he will not make the relevant payment until the dispute is resolved in accordance with the provisions made in Article 132 (*Escalation and Dispute Resolution*) as below.

### **Article 116. Response of the Concessionaire Company regarding the disputed amounts**

Within 20 (twenty) Business Days from receiving the notification of the Contracting Authority according to the provisions of Article 115 (*Disputed Amounts*) above, the Concessionaire Company notifies the Contracting Authority if it accepts or rejects the various calculations of the value provided in the Annual Statement of Payments or Request for Payment in the notification of the Contracting Authority and:

- a) if the Concessionaire Company accepts the calculations submitted by the Contracting Authority, or if it does not comment on them within the given time, the value presented in the Annual Statement of Payments or Request for Payment, presented in the notification of the Contracting Authority is used; or
- b) If the Concessionaire does not agree with the calculations submitted by the Contracting Authority, the dispute shall be settled between the parties in accordance with the provisions of Article 132 (*Escalation and Dispute Resolution*) of this Contract.

#### **Article 117. Settlement of Disputes related to Payments**

In the event of a dispute between the Contracting Authority and the Concessionaire Company regarding the value provided for in the Annual Statement of Payments or the Request for Payment, such dispute shall be settled in accordance with the provisions of Article 132 (*Escalation and Dispute Resolution*).

### **CHAPTER 18 TRANSFERS**

#### **Article 118. Transfer of the Contract by the Concessionaire**

**118.1** Except as provided in Article 10 (*Right to Subcontract*) or in other circumstances expressly permitted under this Contract, the Concessionaire Company may not pass on or transfer (a) this Contract or any other contract or agreement entered into therein, (b) his rights and obligations set forth herein or in contracts or other agreements entered into in connection with this Contract, (c) or any asset, without the prior approval of the Contracting Authority. Notwithstanding the foregoing, the Concessionaire Company may transfer the Operating Agreement with the prior written approval of the Contracting Authority. The Contracting Authority shall not unreasonably delay or refuse this approval, replying to the Concessionaire regarding this request for approval, no later than 30 (thirty) calendar days from the day on which the Contracting Authority received the request from the Concessionaire Company.

**118.2** The transfer of the Contract by the Concessionary Company according to this Article, with the prior consent of the Contracting Authority, can be transferred only after the completion of the construction of the work, to a Third Party that meets the eligibility requirements, defined in the Bid Documentation, based on to whom the Contract was originally awarded, unless:

- a) these requirements refer to conditions that are no longer necessary for the fulfillment of the Contract due to the fact that these mentioned obligations and requirements are already being fulfilled or realized by the Concessionaire and/or the Concessionaire Company.
- b) The transfer of the Contract does not spoil the quality and does not worsen the continuity of the realization and fulfillment of the Contract

**118.3** The Contracting Authority requires a prior approval from the Relevant Authority responsible for finances for all planned transfers of the Contract, which affect or create the risk of affecting in any way the budget of the State or the budget of local government units, or which may change in any way the financial support, as defined by Law No. 125/2013 "*On Concessions and Public Private Partnership*", amended. The contracting authority shall notify the Appropriate Authority responsible for the finances of the transfers of the Contract made in accordance with this Article.

**Article 119. Transfer from the Contracting Authority**

The Contracting Authority may not transfer this Contract or its rights and obligations without the prior approval of the Concessionaire Company, which shall express within a 30 days term. The Concessionaire Company shall not unreasonably delay or refuse such approval.

**Article 120. Transfer of shares of the Concessionaire Company**

In accordance with Law No. 125/2013 "*On Concessions and Public Private Partnership*", as amended, for any change in the Control of the Concessionary Company during the Duration of the Contract, the prior written consent of the Contracting Authority and the Relevant Finance Authority must be obtained, acting reasonably and based on objective criteria rather than discretion. The objective criteria will be considered fulfilled when the Concessionaire Company proves that the legal and economic position of the Concessionaire Company for the implementation of the Works and/or Services will not deteriorate as a result of such a change. The Contracting Authority will give its approval or reject it by arguing the reasons for the rejection on the proposal for the change of ownership, in accordance with the deadlines provided in the above Law, and the by-laws in its implementation, and within 30 (thirty) Days Work by obtaining prior approval or rejection from the Relevant Authority responsible for finances.

**Article 121. Creating Security Liens**

For the purpose of financing the Works, the Concessionaire Company or Concessionaire may create a security lien on the rights, interests, in accordance with and under this Contract and the Law No. 125/2013 "*On Concessions and Public Private Partnership*", as amended,

**Article 122. Substitution Right by Lenders**

Notwithstanding any provision to the contrary in this Agreement, the Parties agree that, in the event of a Default by the Concessionaire under this Agreement, or under the Financial Agreement, and the continuation of the event of default until the expiration of the relevant period for correction, the Lenders shall have the right to propose a Substitute Company for the Contracting Authority, which will replace the Concessionaire Company.

**Article 123. Substitution Conditions**

Prior to this substitution, Lenders will need to provide sufficient and satisfactory evidence to the Contracting Authority for the Substitute Company that:

- a) it is duly established and registered as a company and has the possibility and capacity to be a party to such agreements, which may be required for the substitution;
- b) has sufficient financial and technical capacity to perform and complete all obligations of the Concessionaire Company in this Contract;
- c) has the capacity to pay the financial obligations, which the Contracting Authority has the right to receive from the Concessionaire Company before or at the time of this substitution; and
- d) meets all legal requirements set out in the Law, or in the relevant legislation on public-private partnerships and concessions, or that on public procurement.

#### **Article 124. Time of substitution**

In accordance with Law no. 125/2013 "*On Concessions and Public Private Partnerships*", as amended, Lenders, or representatives of Lenders, as the case may be, have the right, after approval by the Contracting Authority according to the following procedure, to make effective the substitution within a reasonable time after the expiration of the correction period, as may be specified therein. In order to make this substitution, the Lenders, or the Lenders' representatives, as the case may be, shall notify their purpose to the Contracting Authority and provide it with all information, as may be necessary and appropriate required by the Contracting Authority to verify that the conditions set out in this Article are met. The Contracting Authority, within a reasonable time from this notification, and in any case within 20 (twenty) days will inform the Lenders or their representatives, regarding the acceptance or not of the substitution, acceptance, which cannot be refused, if the conditions set out in Article 123 (*Substitution Conditions*) are met.

### **CHAPTER 19 FINAL PROVISIONS**

#### **Article 125. Confidentiality**

**125.1** The parties are obliged to maintain confidentiality in relation to such provisions of the Contract, the Appendices to this Contract and the Project Documents, as well as any data created and maintained in accordance with this Contract, which are defined by law as "trade secrets" or "personal data".

**125.2** This article does not apply when the information made available:

- a) is given to the Parties as required and to the extent necessary to fulfill the obligations under this Contract;
- b) is usually available to the Parties, unless otherwise provided as a result of breach of obligations under this Contract;
- c) in accordance with the procedure provided for in Article 132 (*Escalation and Dispute Resolution*) of this Contract, on the settlement of disputes;
- d) if required by Law;
- e) given to the professional advisors of the Concessionaire Company;

- f) to the lenders or their advisors and their Insurance advisors; and
- g) for the implementation of a decision / order of the court or an administrative act of a Relevant Authority.

**125.3** The provisions and obligations set forth in this point will continue to remain in force for up to 5 (five) years after the Contract Closure Date.

**Article 126. Data of the concessionaire company**

The Concessionaire Company maintains and preserves complete data regarding the Road including, but not limited to, data on actual or projected costs for the operation of the Road and the provision of Works and Services, construction, operation and financing costs throughout the Duration of the Contract.

**Article 127. Silent Approval by the Contracting Authority**

In the event that based on the provisions of this Contract the Contracting Authority has the right or obligation to give an approval, the non-issuance of which will be considered silent approval, but has not given the approval in accordance with the deadline provided in the specific provisions of this Contract, then after that deadline, the approval will be considered given in silence. In cases where the Contracting Authority has the right or obligation to grant an approval, the non-issuance of which is considered as tacit approval under this Contract and for which the Contract has not provided a specific deadline for approval, it shall be considered that the Contracting Authority has given the silent approval after 20 (twenty) Business Days starting from the day when the Authority has the right or obligation to give the approval.

**Article 128. Notifications**

**128.1** All written communications made under this Contract, or any other communication relating to this Contract, by either Party shall be communicated to the other Party in one of the following ways:

- a) hand delivery of written communication, as long as this submission is recorded or receipt confirmation is received;
- b) fax; and / or
- c) by mail or by registered courier service (verification of delivery).

Written communication is sent to the parties at the following addresses:

When sent to the Contracting Authority:

Address: Rruga “Deshmoret e Kombit” 1001, Tiranë

Email: info@infrastruktura.gov.al

To: Ministry of Infrastructure and Energy

When sent to the Concessionaire/ Concessionaire Company:

Address:.....

Email:.....  
To: "Concessionaire Company....."

**128.2** Except as expressly provided otherwise in the Contract, the Parties agree that when a notice or request requires a response, approval, rejection, or argumentation of the other Party, the Party receiving the notice or request shall express its position in writing within 20 (twenty) Business Days by giving relevant reasoning.

**Article 129 Partial invalidity**

If any provision herein is, or becomes invalid or unenforceable, such invalidity or unenforceability is without prejudice to the other provisions of this Contract. The Parties undertake to replace the invalid and unenforceable provision as soon as possible with another valid and enforceable provision, the content of which is similar to the invalid or unenforceable provision.

**Article 130. Data protection**

**130.1** If during the implementation of this Contract the Concessionaire Company will process personal data, it will fulfill all the obligations deriving from Law no. 9887/2008," *On the protection of personal data*", and if the consent of the subject of the details required, such consent will be obtained so that personal data can be provided to the Contracting Authority.

**130.2** The Contracting Authority will not provide to a third party (excluding the Relevant Authority), any of the confidential data part of the Bid Documentation and Project Documentation, without the approval of the Concessionaire.

**Article 131. Regulatory law**

This Contract is regulated by the Albanian Law.

**Article 132. Escalation and dispute resolution**

**132.1** The Contracting Authority and the Concessionaire Company will make every possible to solve the issues and conflicts that have occurred with them or in connection with this contract with direct negotiations.

**132.2** If the parties fail to solve the issues or the conflict in agreement, they shall resolve the dispute in accordance to this contract and the jurisprudence procedures in force and in accordance with the Albanian legislation.

**Article 133. Amendments to the Contract**

**133.1** This Contract may be amended by written amendments signed by both Parties and approved by the Council of Ministers.

**133.2** Any amendment to this Agreement or any appendices attached thereto, upon its entry into force, shall be an integral and integral part of this Agreement.

**Article 134. Costs and expenses of the parties**

Unless otherwise provided in this Contract, or in any other Project document, each Party shall bear all costs incurred in regarding the implementation of this Contract and its amendments.

### **Article 135. Conflict of Contract versus other agreements**

If the provisions of this Contract conflict with the provisions of an agreement or other contract between the Parties to this Contract, in relation to the same Object, regardless of whether such an agreement was made before the signing of this Contract, this Contract shall always prevail.

### **Article 136. Waiver of Immunity**

**136.1** Subject to the Law, the Parties irrevocably and unconditionally waive and agree that they will not assert any immunity for themselves, their respective income, assets or properties, in connection with any notice, suit, jurisdiction, judicial process, arbitration, interim award, judicial decision or enforcement of the award. For the avoidance of doubt, the waiver of immunity does not include property which is subject to the provisions of the Vienna Convention on Diplomatic Relations of 1961.

**136.2** The waiver of immunity does not include:

a) “Premises of the mission”, present or future, as defined in the Vienna Convention on Diplomatic Relations signed in 1961, “consular premises”, present or future, as defined in the Vienna Convention on Consular Relations signed in 1963, or which are used by a diplomat or diplomatic mission of Albania or any agency or instrumentality thereof;

b) Any immovable property under Article 3, paragraphs 1-3 of Law No. 8743, dated 22.02.2001 “On State Immovable Property”, as amended;

c) No monetary funds/or monetary amounts determined for the fulfillment of obligations that the Republic of Albania has under treaties, conventions or public international agreements signed in its capacity as a Subject of Public International Law.

**136.3** The Parties agree that the final decision announced in the context of the resolution of disputes will be binding and enforceable by the judicial bodies of the Republic of Albania or of the relevant jurisdiction that has announced the final decision.

### **Article 137. Validity of this Contract**

If any term or provision of this Contract turns out to be invalid, that invalidity shall not affect the other provisions. In this case the invalid provision is replaced by the relevant provision of the law or by another provision, if the Parties agree. The same criterion applies in case there is an unintentional omission in the text of this Contract.

### **Article 138 The Entire Contract**

This Contract, including the Appendices, represents the will of the Parties regarding the Project and supersedes any prior agreements or all arrangements, oral or written, between the Parties regarding the Project.

### **Article 139. Impossibility to withdraw from the Contract**

No provision of this Contract makes it possible for the parties to withdraw from the

Contract. The failure of either party to fulfill the obligations of this Contract shall never be construed as a withdrawal from the Contract or a waiver of the rights or obligations arising therefrom.

**Article 140. Contract Registration**

Within 30 (thirty) days from the approval of the Project Implementation, this Contract must be registered in the real estate register, at SCA.

**Article 141. Language and number of copies of the Contract**

This Contract is drafted in the Albanian language and signed in 5 (five) counterparts with the same legal content and equivalent to each other.

**PARTIES**

On behalf of the Contracting Authority:  
**Ministry of Infrastructure and Energy**  
Represented by:  
Name:

\_\_\_\_\_

“.....”

Name:

\_\_\_\_\_

On behalf of the Concessionaire Company:

“.....”

Name:

\_\_\_\_\_



## APPENDIX 1

### Insurance

#### MINIMUM REQUIREMENTS FOR THE INSURANCE FOR CONSTRUCTION, OPERATION, MAINTENANCE

During the Concession Period, the Concession Company obtains and maintains the following insurance coverage, through policies issued by insurance companies licensed by the responsible authority in the Republic of Albania, according to the following conditions:

##### PART 1. CONSTRUCTION INSURANCE

##### **INSURANCE OF THE CONCESSION COMPANY DURING THE CONSTRUCTION PERIOD**

###### 1. Insurance of all risks in construction

**Coverage:** Work of the Contract performed and during the performance of the materials and provisional works, as long as they are in the Project Territory, from all risks that cause material loss or damage.

**Amount Insured:** an amount sufficient to pay compensation claims and not less than [●] percent of the Capital Works [to be determined by the Concessionaire and approved by the Lender].

**Deductible amounts:** Regarding to any event that occurred, during the period of construction and approval [remain to be determined by the Concessionaire]:

- i) from the earthquake Not more than [●] Euro (to be determined)

from storm, tornado, flood, water damage, tsunami, landslide

Not more than [●] Euro  
(remains to be determined by the Concessionaire Company and to be approved by the Lender)

iii) from any cause

Not more than [●] Euro  
(remains to be determined by the Concessionaire Company and to be approved by the Lender)

**Coverage period:** It begins with the Notice of Commencement as provided in the (Construction Subcontract) and continues through design, procurement, site preparation, construction, commissioning, commissioning and until full commissioning, plus [●] ([●]) months warranty period by the Subcontractor construction.

**Insured person:** The Concessionaire Company, the Construction Subcontractor and the suppliers of the Concessionaire and the Construction Subcontractors.

**General:**

- a) The coverage includes the passage within the territory of the Republic of Albania of goods and materials obtained through local procurement.
- b) Damages will be paid in the currency in which the cost was incurred, i.e. euro, US dollar or local currency.
- c) Insurers and reinsurers waive all rights of recourse (return) against any of the parties specified herein.
- d) Includes coverage for defective design, to the extent such coverage is provided.
- e) The sum insured will be calculated at the full cost of the replacement and will include any free materials supplied to the Concessionaire Company.
- f) The policy must also include a section on liability to third parties with a minimum limit of compensation that remains to be determined by the Concessionaire Company and accepted by the Lenders and must include a full cross-over of responsibilities between the insured parties.
- d) CAR coverage will contain a 50/50 hidden damage provision.
- h) The insurance will provide for the following:
  - Strikes, riots and civil disturbances (SRCC);
  - Crossing of responsibilities between insured parties;
  - Extension of the maintenance period;
  - Construction and/or erection chart;
  - Overtime work, night work, work on official holidays and express transport of goods;
  - Facilities in earthquake zones;
  - 72-hour clause for major risks;
  - Removal of water;
  - Testing of machines and installations;
  - Cables, pipes and other underground facilities;

- Aquatic plants, forests and crops;
- Sections;
- Camps & warehouses;
- Building materials;
- Protective measures related to rainfall, flooding and waterlogging;
- Removal of inerts;
- Firefighting facilities and fire protection at the construction site;
- Ground transit;
- Designer's risk;
- Existing properties;
- Vibrations/weaknesses of supporting structures;
- Works for pile foundations and retaining walls;
- Manufacturer's risk (for e/m installations);
- Construction plants and equipment.

**Special conditions**

The insured takes all relevant measures to protect third parties from any accident/damage during the execution of the works.

1. Insurance against losses caused by late completion of the project (ALOP)

**Coverage:** Payments arising after delay in commencement of Project operations as a direct result of loss or physical damage covered by the Insurance of all the risks in construction.

**Sum Assured:** Toll revenue or an amount at least equal to the repayment of the total debt and fixed expenses during the Indemnity Period.

**Indemnity period:** 12 (twelve) months from the scheduled preliminary completion date of the Works for the Tariff Areas.

**Insured Person:** Concessionaire Company and Lenders.

**Deductible Amount:** Not more than 30 (thirty) days.

**General:** Coverage must cover denial of entry; coverage for customers and suppliers, as appropriate.

2. Other

Other insurances according to custom, desire or need in fulfillment of local requirements or other requirements, such as contractual liability insurance, workers' compensation insurance and employers' liability in relation to all workers employed in the construction of the Project and liability insurance for all vehicles owned, leased, used or borrowed for use in the Republic of Albania in relation to the project.

**PART 2- INSURANCE FOR USE**

The Concessionaire Company obtains and maintains the following insurance coverages at all times during the period of the Concessionaire, through policies and by insurers acceptable to the Lenders and to the Contracting Authority under the following conditions:

- i. Insurance of construction facilities after completion (CECR)

**Coverage:** All assets constituting the Project, including, but not limited to, buildings and their contents, machinery, inventory, fixtures, other small equipment and all other personal property from “all risks” of material loss or damage , including fire, lightning, explosion, natural hazards (flood, earthquake, etc.), terrorism and sabotage, strikes, civil unrest and machinery breakdown.

**Sum Assured:** An amount sufficient to restore the property to its previous condition (remains to be determined by the Concessionaire and accepted by the Lenders).

**Deductible amount:** Minimum amount reasonably determinable in accordance with the Insurance Law

**Insured Person:** Concessionary Society and Lenders.

**General:** Include a clause waiving rights of recourse by insurers and reinsurers against each of the parties specified herein.

ii. Discontinuation of business (operation)

**Coverage:** Loss of income as a direct result of loss or damage to the Project covered by Article 1 above.

**Sum Assured:** The income from the road fee or an amount at least equal to the repayment of the total debt and fixed expenses during the compensation period.

**Compensation period:** 12 (twelve) months

**Insured person:** Contracting Authority, Concessionaire Company and Lenders.

**Deductible amount:** Minimum amount reasonably determinable in accordance with the Insurance Law

**General:** Include a clause waiving rights of recourse (return) by the insurers and reinsurers against each of the parties specified herein.  
Coverage for customers and suppliers, as applicable.

iii. Ensuring legal liability to third parties/public/products

**Coverage:** Legal liability of the insured parties for the death or bodily injury of third parties or for the loss or damage to their property, arising out of the ownership, operation, use or maintenance of the Project.

**Limit of indemnity:** To be determined in agreement with the Lenders but not less than [●] Euro [remains to be determined by the Lenders as the date of financial close approaches] for each event (expressed as an aggregate amount in respect of Product Liability and Pollution Risks) .

**Deductible amounts:** Minimum amount reasonably determinable in accordance with the Insurance Law

**Insured person:** Contracting Authority, Concessionaire Company and Lenders.

**General:** To include:  
a clause waiving recourse (return) rights by insurers and reinsurers against each of the parties specified herein;  
a cross-liability clause between the insured parties;  
[a worldwide territorial validity clause;]  
unexpected and accidental spills, pollution and contamination, and costs incurred for cleanup.

iv. Other

Other insurances,

- a) according to custom or need in fulfillment of local requirements or other requirements, such as contractual liability insurance, workers' compensation insurance and employers' liability related to its use; liability insurance for all vehicles owned, leased, lended, used or borrowed for use in the Republic of Albania in connection with the Project;
- b) that are considered by the Concessionary Company as desirable or necessary within the framework of prudence, or that are required by the Lenders or the Contracting Authority such as the insurance of the members of the board of administration and the insurance of subordinates; or
- c) in accordance with the legal and bylaws in force.

**GENERAL**

- a) The Concessionaire shall ensure that any policy purchased in accordance with this appendix provides for:
  - i. Transfer of policy rights to Lenders and the Contracting Authority;
  - ii. Clause for the right of the insured to go directly to the reinsurer/ for the transfer of rights to the funds from the reinsurance;
  - iii. that the policies shall not be cancelled, allowed to lapse, suspended or changed in material respects without prior written notice (at least 30 days) to the Lenders [and the Contracting Authority] and without obtaining their approval, or within a period of short ones that can then be defined in relation to the war and related risks;
  - iv. that the protection afforded to the Lenders under the policies is not voided by any act or omission on the part of the Concessionaire Company or its Subcontractors or sub-Subcontractors, so long as this protection has been agreed by the insurance consultant to be possible in reasonable manner; and
  - v. that the Competition Authority is not responsible before insurers or reinsurers for the payment of insurance premiums or for other obligations of the Concessionaire.
- b) The Concessionary Company receives and makes available to the Lenders and the Contracting Authority the letter guarantees from the insurer/insurers and the broker, with the form and content acceptable to the Lenders [and the Contracting Authority], which deals, among other things, with the notification made to the Contracting Authority in the event that insurers and brokers are notified of facts that may affect coverage under the policy, confirmation of premium payment, and any change in coverage, receipt or insurance company.

- c) Any policy made pursuant to this appendix:
  - v. held with such reputable insurers and reinsurers, subject to approval obtained from the Lenders and/or the Contracting Authority;
  - vi. has form and content in accordance with the obligations of the Concessionaire Company under this appendix, according to the renewal that may be obtained from the Lenders and/or the Contracting Authority and
  - vii. does not include any provision for self-insurance or for a fund held in self-insurance except to the extent that the deductible amounts set forth in this appendix are provided.
- d) The Concessionaire shall make available to the Lenders and the Contracting Authority such information as may reasonably be required (such as, but not limited to, original policy documents and proof of payment of primes).
- e) If at any moment and for any reason the insurance required to be maintained based on this appendix is not valid and in force, without prejudice to the rights of the Contracting Authority, the Contracting Authority has the right to be insured from that moment on at the expense of the Concessionaire Company.
- f) If the Contracting Authority reasonably considers that, as a result of a materially significant change in the identified risk exposure, any of the terms, values and deductible amounts of insurance obtained pursuant to this appendix is insufficient or inappropriate, The Contracting Authority may require the Concessionaire to obtain amended and/or additional insurance as necessary to cover the material change in question.

## APPENDIX 2

(Draft)

### **Main Provisions of the Monitoring, Coordination of the Operating Service Agreement**

#### **The parties agree:**

The establishment and maintenance of the Monitoring and Coordination Infrastructure, referring to the Operating Service, is carried out by the National Road Operating Entity.

The Operating Service of the Milot - Balldre Road will be performed by the Concessionaire Company from the start of the operation service until the End Date of the Contract.

The Operation Service that will be performed and provided by the concessionaire company includes the operation and maintenance of the Operation Infrastructure, including the cabins, the system of automated gates for allowing entrances and exits to the Street, traffic sensors and other measuring elements, the electronic system for collecting Tariffs and traffic monitoring, the necessary servers for keeping and processing traffic data and relevant receipts, as well as any other necessary element ("**Operating Infrastructure**") for the realization of the service of enabling access to the Users' Route, Fee collection, traffic control and providing assistance to Users, prevention of violations, including response in case of emergency interventions ("**Operating Service**").

#### **I. Obligations of the Concessionaire Company**

The Concessionary Company is responsible for the maintenance of the Operating Infrastructure built by it, including any other elements necessary for the realization of the Operating Service and the control of the Road traffic.

The Concessionaire Company must set up and maintain the operating system for the collection of Tariff Revenue. The Concessionary Company will ensure that the traffic sensors and other reporting elements of the operation system, send the data to the monitoring system, which will be owned by the National Road Operating Entity and as far as the Intelligent Transport System (ITS) is concerned, send these data to the National Traffic Monitoring Center. The system of the National Road Operating Entity and the system of the National Traffic Monitoring Center operate independently from the monitoring system of the Concessionaire Company.

The operating system of the Concessionary Company must guarantee "back-up" of data at the end of each day as well as be protected from cyber intrusions.

The Concessionaire Company will ensure that the traffic sensors will be operational 24 hours a day, 7 days a week.

The Operation Service by the Concessionary Company will be performed by qualified staff, offering a quality and professional service, which stimulates the satisfaction of the Road Users and therefore their attendance.

The Concessionaire Company will perform the Operation Service in accordance with the Concession Contract and Operation Coordination Procedures, as well as the Road Operation Plan.

The Concessionaire Company must take all necessary measures to prevent/minimize incidents of Tariff Evasion.

The Toll tariffs will be paid to the account of the National Road Operating Entity.

The Concessionaire Company will pay for the Monitoring Service Coordination of the Operating Service performed by the National Road Operating Entity. The tariff for EKORR in accordance with the provisions of the Council of Ministers No. 684, dated 6.11.2024 “On the establishment of the joint-stock company “National Road Operation Agency” sha”.

## **II. Obligations of the National Road Operating Entity (NROE)**

The National Road Operating Entity is responsible for Monitoring and Coordination of the Operating Service.

The National Road Operating Authority will supervise all payment operations on the roads managed by different operators and shall:

- o Supervise the compliance with regulations and agreements.
- o Ensure data integrity and security.
- o Manage the disputes between operators.
- o Audit the collection and distribution of income.

## **III. Unified System of Tariff Collection**

To avoid duplication of toll stations at the exits and entrances of the highways connected between them (eg, between Highway 1 and Highway 2), a unified toll collection system will be implemented.

## **IV. Revenue Distribution System**

The central system of the National Road Operating Entity will also manage the automatic and fair distribution of the collected toll revenues among the operators based on the usage data of the respective Roads.

## **V. Communication Network**

A safe communication infrastructure will enable real-time data exchange between toll stations and the central base.

**This draft of appendix 2 (two) will be completed by the parties, within the deadline set in the Concession Contract and will be approved by them after receiving the opinion of the Ministry of Finance.**



## APPENDIX 3

### Approved list of excluded users

These categories of vehicles when traveling for official business are exempt from the obligation to pay the Road Use Tariff.

#### List of excluded users for the Contracting Authority:

1. Traffic Police vehicles
2. Ambulances
3. Vehicles of the Fire Brigade
4. Military vehicles, Nato

#### List of excluded users for third parties requested by the Contracting Authority:

1. The persons who enjoy the status of disabled, based on law no. 7889, dated 14.12.1994 "*On the status of the disabled*", amended, and use Vehicles only for their personal needs and not for private activities, are fully or partially excluded in accordance with the legislation in force.

#### The list of excluded users for NROE, during the duration of the monitoring by this Entity:

1. Vehicles of the staff of the NROE engaged in the Monitoring and Coordination Services.

#### List of excluded users for the Concessionaire and the Concessionaire Company:

1. Staff vehicles in charge of Maintenance and Operating Services.

## APPENDIX 4

### Contracting Authority Payments during the Warranty Period

The following table shows the Basic Revenue (BR), which have the meaning of revenues which allow the project to have a positive and stable cash flow.

In case for the first -----year period during the Operating and Maintenance Period ("Warranty Period") there will be a decrease in the level of Basic Revenue, below the values shown in the column labeled "Basic Revenue", respectively reflected for each year in the following table from year ..... to year ....., the Contracting Authority applies traffic guarantees according to the specifications made in the column "Warranty" (W) through the Revenue Deficit Reconciliation Payments, which the Authority The Contracting Authority may make to the Concessionaire Company for each Year of the Contract during the Warranty Period.

The values are in millions of Euros and are VAT excluded.

No.	Year (Y)	Basic Revenue (BR)	Guarantee (G)
Period of fulfillment of the preliminary conditions and Construction Period			
1.	1.		
Construction period			
2.	2.		
3.	3.		
4.	4.		
Operating and Maintenance Period			
5.	5.		
6.	6.		
7.	7.		
8.	8.		
9.	9.		
10.	10.		
11.	11.		
12.	12.		
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32.	32.	
33.	33.	
34.	34.	
35.	35.	

**APPENDIX 4/1**

**Surplus payment of the revenue from the Concessionaire Company**

If the Concessionary Company during the Operating Period will exceed the amount of Basic Revenue respectively reflected for each year of the Operating Period in the table below, the Concessionary Company will pay the Contracting Authority the Surplus Revenue Payment, which is the payment that the Concessionary Company can make to the Contracting Authority for each Year during the Operating Period, if the Basic Revenue is exceeded, and is equal to the value resulting from the application of the following formula: the difference resulting from the Fee Revenue collected for that Year minus the estimated Basic Revenue for the same Year, multiplied by ..... (..... percent).

To avoid any misunderstanding, if the Tariff Revenue is equal to the Basic Revenue, or if the difference resulting from the Tariff Revenue minus the Basic Revenue is a negative number, the Concessionaire Company will not make any Surplus Revenue Payment.

The following table shows the level of the Basic Revenue amounts, the exceeding of which brings about the application of the Surplus Revenue Payment of the Concessionary Company to the Contracting Authority according to the above formula.

No.	Year (Y)	Basic Revenue (BR)
Period of fulfillment of the preliminary conditions and Construction Period		
1.	First year	
2.	Second year	
3.	Third year	
Operating and Maintenance Period		
1.		
2.		
3.		
4.		
5.		
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Values are in Euro and VAT excluded.

## **APPENDIX 5**

### **Main Duties of the Independent Engineer**

#### **The role of the Independent engineer**

The independent engineer (IP) is contracted by the Contracting Authority (CA) to manage and improve certain aspects of the Concession Contract, mainly in relation to the verification of the fulfillment by the Concessionaire Company of the technical requirements of the Contracting Authority.

In general, the role of the Independent Engineer should be expanded to cover functions for which the Contracting Authority is not fully equipped.

The Independent Consulting Engineer is required to provide expertise in accordance with the provisions of the Contract. For this reason and in support of the functions that the Independent Engineer must perform, he must provide sufficient staff, who must possess the appropriate knowledge of the field. The staff of the Independent Engineer should include but not be limited to the following specialties:

- Project Director
- Chief Engineer
- Quality control engineer
- Materials Engineer
- Geologist engineer
- Geotechnical engineer
- Structural engineer
- Engineer for the signaling, traffic and safe protection
- Environmental engineer
- IT specialist
- Inspector
- Geometer Engineer
- Terrain Engineer

The role of the Independent Engineer is to independently certify that the work conforms to the requirements and that any work is done through the quality assurance/quality control of the Concessionaire Company, as may be necessary from time to time, in accordance with the instructions of the Contracting Authority to confirm and/or correct progress.

The Independent Engineer supervises and controls, through its own Quality Systems, the

performance of the Concessionaire Company. The Independent Engineer performs quality control audits as needed (based on the statistical variance of the Concessionaire's performance), to confirm compliance with the Standards.

If the Independent Engineer states that there is non-compliance, then the Concessionaire's Quality Systems must dictate that the work to be corrected/redone.

More specifically, the Independent Engineer undertakes the following functions:

### **I. General functions**

1. Carry out general inspections, audits and assist in trials or investigations in relation to the Works or Services, having at all times unrestricted freedom to enter any territory or workshop where materials are produced, subject to following all relevant security procedures;

2. Supervises the fulfillment by the Concessionaire Company of the provisions of the Concession Contract, with the relevant adaptations allowed by the Contract, and immediately informs the Contracting Authority and the Concessionaire Company if non-fulfillment is found;

3. Has unrestricted freedom of entry into the Project Territory at any reasonable time throughout the Contract Period in order to perform its functions;

4. Has the right to enter any property used by the Concessionary Company for the realization of Works and Services, to control the construction, use and maintenance of the Project and to follow the fulfillment of obligations by the Concessionary Company;

5. Has the right to enter at any moment in any property used by the Concessionary Company as a training facility or workshop and in the places where work is prepared or materials are extracted for the Project, to follow the fulfillment of obligations by the Concessionary Company;

6. Has the right to participate in the meetings where monthly or other frequent progress is discussed in relation to the Works and/or Services and to receive timely notification of these meetings from the Concessionary Company;

7. Has the right to request and receive copies of all drawings, connections, specifications and appendices, after any modification made by the Concessionaire Company;

8. Acts in compliance with the CHAPTER 5, Article 47 and CHAPTER 5, Article 48 for the elimination of the Defect of the Concessionary Company.

9. Has the right to require the Concessionaire to remove from the Project Area any agent or employee of the Concessionaire or any Subcontractor at any level, as the case may be, who, in the opinion of the Independent Engineer, commits a violation or is incompetent or negligent in the proper performance of tasks related to the Project, or whose presence is considered undesirable in the Project Territory;

10. Consults with the Parties on any matter related to the Works and Services;

11. Provides reports or information to the Contracting Authority and the Concessionaire Company;

12. Examines the repeal or change with a negative impact of all or some of the Project Documents and gives its opposition to this if necessary;

13. Every time is asked to give a decision, opinion or consent or to express his conviction or approval or to perform other actions that may affect the rights and obligations of the Parties involved ("**Finding**"), unless otherwise provided, the Independent Engineer makes this Finding as soon as it is possible and in any case within the deadline provided in the Concession Contract and/or in the requirements of the Contracting Authority and/or the Concessionary Company according to the matter in question and communicates the comments it may have regarding this Finding within the relevant deadline;

14. Gives non-approval assessment for the reports that are based on incorrect information or data or that are inconsistent with this Agreement;

15. Has the right to view, audit and receive copies of the evidence of the Concessionary Company at any time;

16. Changes address after notifying the Parties involved.

## **II. Special functions related to the requirements of the Contracting Authority and the Concession Contract:**

### ***Quality management system***

1. Approves and provides comments on the quality control manual for construction, operation and maintenance.

2. Monitors and audits the Concessionaire's Quality Management System and related quality plans, including those of its designers, Subcontractors and suppliers, at intervals deemed reasonable by the Independent Engineer.

3. Reviews quality documentation in accordance with the required standard.

4. Approves and comments on the relevant Quality Systems drawn up by the Concessionaire Company before the start of any part of the Works or Services and their updates according to the provisions of the Contract during the Contract Duration.

5. Participates in official and scheduled checks of service levels that are developed and carried out by the Project Implementation Unit.

### ***Road Operation and Maintenance***

1. Approves and provides comments on the detailed draft version of:

- quality control manual for operation and maintenance,
- health and life protection manual for operation and maintenance,
- operation and maintenance manual, and operation and maintenance plans,
- control and monitoring manual or manuals,
- Environmental Management Plan.

2. Obtain copies of confirmation of the consent of the Relevant Highway Authority for the Concessionaire to use a diversion route at the proposed times and dates due to the closure of the Road.

3. Approves (together with the police) the range of services in the event of an accident.



4. Approves or comments the Plan in response to Force Majeure Events or other severe situations.

5. Receive reports and evidence of the Concessionaire Company for Force Majeure Events or other serious situations.

6. Consults with the Concessionaire Company regarding the final resolution of Force Majeure Events or other serious situations, depending on their type.

7. Approves the detailed draft version, the final version and the annual updates of the Winter Maintenance Plan of the Concessionaire Company and the Operating Plan from the Responsible Operating Entity.

8. Agrees and gives approval for the use of similar or improved technologies to be used for Road geodetic measurement.

9. Receive quarterly reports from the Concessionaire Company detailing the works performed in the last quarter and the maintenance programs that are proposed for the future.

10. Agrees on how to report road layer condition parameters.

11. Advises on additional investigations to be carried out regarding existing geotechnical conditions and possible immediate hazards.

12. Identifies jointly with the Concessionaire Company the permanent repairs of drainage channels to be carried out under the responsibility of the Contracting Authority before the next rainy season.

13. Approves the additional time required for the structural repair as justified by the Concessionaire Company.

14. Approves the changes made to the preventive maintenance program of the Concessionaire Company in case the anticipated objectives are not achieved.

15. Examines and approves the justification presented by the Concessionaire Company for deviating from the response deadlines due to severe weather conditions.

#### ***Control, monitoring and management systems***

1. Advises on the time allowed for defect repairs in cases where these repairs are necessary and cannot be completed within the time frame agreed upon by the Parties.

2. Provides advice and guidance on facility inspections in relation to meeting Good Industry Practice standards, as well as facility management systems.

3. Approves the detailed project proposal for the development and use of inventory and infrastructure management systems.

4. Approves/confirms operational demonstration of inventory management systems and infrastructure.

5. Approves the control-monitoring program for the next year.

#### ***Capital Works and Capital Repairs***

1. Coordinates and supervises the Capital Works and/or Capital Repairs undertaken by the Contracting Authority and/or the subcontractor of the Contracting Authority during the Concession Period, which must be accommodated by the Concessionaire Company.

2. Provides (additional) recommendations for design standards to be used in new proposals as well as in the preparation of all major final designs of Capital Works elements by the Concessionary Company.

3. Approves the complete package of design standards for each element of the Works that the Concessionaire Company has compiled before the start of any major final technical project.

4. Approves deviations from confirmed design standards and norms, as well as preliminary and/or detailed designs, that may be beneficial to the Contracting Authority and the Project in terms of road safety, efficiency of use, economy in construction and maintenance, construction program, overall lifespan, meeting new international standards and of the EU harmonization, in compliance with the Contract.

5. Confirms his approval of the project proposal in writing upon reaching agreement on this.

6. Reviews and approves the additions and changes to the accepted project proposal presented by the Concessionary Company as an appendix before the start of work for the aspects of the Works that are affected by said appendix.

7. Controls the effect that temporary objects have on the permanent structure (but does not control temporary objects).

8. Reviews and accepts (or rejects) the complete final project for the Capital Works elements that must include the complete evidence of the approved project.

9. Searches and uses the design manual as a comprehensive supporting text and efficient working document.

10. Comments and approves the work program for the technical projects presented by the Concessionary Company for all the elements that make up the Capital Works.

11. Examines the submitted project proposals, in consultation with the Contracting Authority. Upon completion of the review, the Independent Engineer:

- approves the submitted material,
- grant conditional approval requiring revisions to be made and incorporated into the working drafts, or
- partially or completely rejects the material if it finds that the technical design does not meet the technical requirements of the Contracting Authority and/or the design criteria provided for in the Contract or the Law.

12. Reviews the technical sketches of the submitted work. Upon completion of the review, the Independent Engineer:

- approves the submitted material,
- partially or completely rejects the material if finds that the technical design does not meet the technical requirements of the Contracting Authority and/or the design criteria or with the comments made by the Independent Engineer as part of the conditional approval of the design proposal.

13. Monitors the Works in accordance with the Concession Contract.

14. Approves deviations from standards and norms related to technical specifications that are beneficial to the Contracting Authority in terms of road safety, operational efficiency and durability.

15. Receives and approves the Capital Works construction management plan for all aspects of the Capital Works.

16. Approves the detailed program for the design and construction of the Works for each aspect of the Capital Works submitted by the Concessionaire Company.

17. Approves monthly progress reports and program updates as required.

18. Participates in the annual process of consultations and approvals related to the realization of Capital Works based on predetermined start and end dates (or conditional start dates and corresponding end dates, as the case may be).

### ***Performance management and evaluation***

1. Monitors and reports on the progress of the Concessionaire Company against the contractual requirements based on the Monthly Reports/Annual Progress Reports, Operation and Maintenance Manual, Road Construction Plan, Quality Systems and Environmental Management Plan that provide the necessary information for management.

2. Undertake Quality Systems audits and some technical audits of actual works.

3. Undertake technical audits of the Services and Works monitored by the dedicated Quality Control Unit of the Concessionaire Company.

4. Has the right to increase, at the expense of the Concessionary Company, the level or frequency of monitoring, auditing, testing and inspection of the road and compliance by the Concessionary Company of its obligations under this Contract, to the level that the Contracting Authority or the Independent Engineer considers it appropriate, according to the Concession Contract.

### ***Return***

1. It may be directed by the Contracting Authority to conduct an inspection of the Road to ascertain whether or not the Concessionaire is complying with the requirements of this Contract and in particular whether the requirements for return by the Contract Completion Date will be met.

2. Reviews and approves the evaluation plan for the return before the start of any work by the Concessionaire Company.

3. Consult with the Concessionaire Company regarding the update of the evaluation plan, translation as necessary to reflect the changes in the conditions of the project assets or of the evaluation methodology determined after the inspection of the Road by the Contracting Authority or by the person designated by it.

4. Reviews and approves detailed testing and inspection procedures in accordance with Contract requirements.

5. Coordinates with the Concessionaire Company all aspects of the restoration works plan for the return.

6. Receives the documentation from the Concessionary Company where it is known that the Concessionary Company has fulfilled the instructions and has fulfilled and completed the

obligations for any correction as required by the Law in relation to those areas where remedial measures had to be taken due to contamination or fuel spill.

7. Assists the Concessionaire in carrying out the final inspection for the return in order to determine what remedial works are left undone.

***Other duties:***

1. Certifies that the Additional Land and/or Extra Land is required by the Concessionaire Company to fulfill its obligations under this Contract.
2. Approves and comments on the initial Program of the Concessionaire Company (or additions and changes to it).
3. Carries out the technical delivery procedure after preliminary completion.
4. Checks and certifies that the Works necessary for the safe use of the Road have been completed.
5. Evaluates the result of the technical delivery procedure and ascertains whether the Concessionaire Company has fulfilled all the requirements of the Contracting Authority for the Works according to the Implementation Project, or informs the Concessionaire Company for any objection.
6. Consults the Concessionaire Company in order to reach an agreement on the measures that are required to be taken in order to achieve the fulfillment of the requirements of the Contracting Authority according to the Implementation Project in case of objection.
7. Performs technical handover procedure after final completion.
8. Checks and certifies that the Works have been completed and fully complied with.
9. Determines what additions and changes must be made to the Operation and Maintenance Manuals in case the Parties do not agree on the appropriate additions and changes.
10. Determines the appropriate additions and changes to the Capital Repairs Program in the event of a dispute between the Contracting Authority and the Concessionaire Company.
11. Determines whether any defect, violation and/or non-fulfilment has occurred and the deadline for rectification in the event of a dispute between the Contracting Authority and the Concessionaire Company regarding the identified defects and necessary to be rectified.
12. Decides for Land Additional similar alternative if the Contracting Authority and the Concessionaire cannot agree.
13. Gets informed and acts as necessary in accordance with the Concession Contract regarding the Relief Causes.
14. Evaluates the evidence provided by the Concessionaire Company regarding the Relief Causes.
15. Gets informed and acts as necessary in accordance with the Concession Contract regarding the Relief Causes from obligation and relevant compensation.
16. Gets informed and act as necessary in accordance with the Concession Contract regarding force majeure events.

17. Evaluates the evidence provided by the Concessionaire Company regarding Force Majeure Events.
18. Is notified in writing of the possible consequences of a Quality Amendment in the Law that has been made or will be made very soon.
19. Is notified of unnecessary delay for the request of the Concessionaire Company to receive benefits after the entry into force of the Quality Amendment of the law.
20. A full and detailed explanation and evidence is made available to him regarding the Quality Amendment in Law and the benefits sought, the estimated length of delay in question, any relevant information relating to the Quality Amendment in Law and the expected loss of income or the increase in costs resulting from the Quality Amendment in the Law.
21. Provides decision-making in the event of a dispute between the Contracting Authority and the Concessionary Company regarding a Change of the Concessionary Company requested in accordance with the provisions of the Article 50 (*Changes requested by the Concessionaire Company*) of the Concession Contract
22. Gives opinion on the reasonableness of the Contracting Authority's proposals in the Change Notice in accordance with the provisions of Article 49 (*Changes requested by the Contracting Authority*) of the Concession Contract.
23. Provides opinion for the claims of the Subcontractors and relevant documentation.
24. Provides opinion if requested by the Concessionaire Company for the implementation of the planned rehabilitations.
25. Performs other functions provided by the Concession Contract.

## APPENDIX 6

### Overview of Maintenance Services Activities

The Maintenance Manual includes the overview of the following activities:

No.	Process Name	The period in which the maintenance and repair is applied	The time limit for the evidence and the time needed for the intervention	Volume performed per Unit of time	Coefficient for each (hours of delay if the action is requested in hours, and days if the action is requested in days, and months if the action is requested in months) delay.
<b>I The Maintenance Operational Plan Activities</b>					
a	Maintenance and availability operational plan	Improved every year	2 weeks	1	
b	Quality assurance plan	Improved every year	2 weeks	1	
c	Environmental Management Plan	Improved every year	2 weeks	1	
d	Life and health protection manual	Improved every year	2 weeks	1	
<b>II Routine maintenance activities</b>					
a	Side mowing of road vegetation	General activities planned but not less than once a year	Evidence - _hours  Intervention - _hours	As the case may be _km	3% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.

b	Horizontal and vertical clearing of vegetation	General activities planned but not less than once a Year.	Evidence - _hours Intervention - _hours	As the case may be _km	3% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
c	Maintenance of jetties and drainage channels, repairs and cleaning from inert waste and debris	General activates planned according to the need	Evidence - _hours Intervention - _hours	As the case may be _ml	2% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
d	Snow and frost removal, slag removal and solid waste removal	General activities planned during the rain and snow	Evidence - _hours Intervention - _hours	The whole road	3% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
e	Maintenance of road signs, damage of signs, guardrail, lines	General activities planned according to the need. The substitution of the vertical signaling and guardrail it is a must that after the visual control is substituted within 24 hours.	Evidence - _hours Intervention - _hours		2% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
f	Cleaning asphalt surfaces from inert waste, dead animals, accidents, etc	General activities planned 2 times a year	Evidence - _hours Intervention - _hours	The whole road	3% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.

g	Inspection and monitoring of bridges and overpasses for Roofs Dilation joints Beams Elastomeers Piles-shoulders Shoulder erosion	General Activities planned 2 times a year.	Evidence - _hours  Intervention - _hours	The whole work	
<b>III</b>	<b>Periodic Repair Activities</b>				
<b>a</b>	<b>INCLINED SURFACES</b>				
	Maintenance of minor slips	Monthly duty and their repair under the routine maintenance because they are small slips	Evidence - _hours  Intervention - _hours	1000 m2	
	Maintenance from erosion	Any time it is necessary but not less than 1 time a year	Evidence - _hours  Intervention - _hours	1000 m2	
	Maintenance of sloping surfaces with geogrids	Anytime is necessary but not less than 1 time in 3 years.	Evidence - _hours  Intervention - _hours	1000 m2	
<b>b</b>	<b>TOMBINO AND BOXES</b>				
	Inspection of tombino and boxes	1 time in 3 years monthly inspections	Evidence - _hours Intervention - _hours	1 Box/Tombino	
	Maintenance of bins and boxes	According to the need, monthly maintenance.	Evidence - _hours Intervention - _hours	1 Box/Tombino	
	<b>RETAINING WALLS</b>				
	Inspection of retaining walls	1 time a year	Evidence - _hours  Intervention - _hours	1 Wall	2% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.



	Maintenance of retaining walls	According to the need, monthly duty, routine	Evidence - _hours Intervention - _hours	1 Wall	2% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
<b>c</b>	<b>ASPHALT ROAD LAYERS</b>				
	Longitudinal corrugations of asphalt	General Activities planned 1 time a year	Evidence - _hours Intervention - _hours	100 ml corrugations	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Insulation and filling of cracks	General activities planned 1 (once) time a year	Evidence - _hours Intervention - _hours	100 ml cracks	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Asphalt wrinkles	General activities planned 1 time a year	Evidence - _hours Intervention - _hours	200 m2 wrinkled area	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Holes in the body of the road and damage to the edge of the asphalt layer	General activities planned 1 time a year	Evidence - _hours Intervention - _hours	50 m2 holes	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Repair of asphalt surfaces on bridges	General activities planned 1 (once) time a year	Evidence - _hours Intervention - _hours	100 ml corrugations	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
<b>d</b>	<b>BRIDGES AND OVERFLOWS</b>				
	Repair of concrete roofs / reinforced	1 time in one year	Evidence - _hours	1 repair	2.5% of the daily amount for 1 km. To be

			Intervention - _hours		applied to every km of the section which is not compliance.
	Repair/ Replacement of joints	1 time in one year	Evidence - _hours  Intervention - _hours	1 repair	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Repair of concrete beams	1 time in one year	Evidence - _hours  Intervention - _hours	1 repair	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Repair / replacement of supports (elastomers)	1 time in one year	Evidence - _hours  Intervention - _hours	1 support	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Repair in/structure	1 time in one year	Evidence - _hours  Intervention - _hours	1 repair	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
<b>e</b>	<b>GUARDRAIL</b>				
	Line repair/replacement	According to the needs	Evidence - _hours  Intervention - _hours	1 km	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.
	Guardrail Repair/Replacement	According to the needs	Evidence - _hours  Intervention - _hours	100 ml	2.5% of the daily amount for 1 km. To be applied to every km of the section which is not compliance.

The basic violations on which penalties will be calculated for each unit of delay in the performance of services and/or works applicable by the Contracting Authority will be in the amount of 1,000.00 (one thousand) Lek/Day for each Km, which is multiplied by the coefficient expressed as a percentage in the column relevant, as above:

The penalty for delays, in case of the above violations, will be calculated and applied by the Contracting Authority in the second 6 months of continuous violations, and after they have been evaluated as violations by the Independent Engineer.

## **APPENDIX 7**

### **Required information from the Concessionary**

**APPENDIX 8**

**Bid Documents**

**APPENDIX 9**

**Data Available by the Contracting Authority**

## **APPENDIX 10**

**Project-idea, sketches, plans and works schedule**

## **APPENDIX 11**

### **Project Territory**



**APPENDIX 12**  
**Guarantee of the Contract**